S. HRG. 101-592

NATIONAL PARK SYSTEM REVIEW BOARD; PARK MARINE RESOURCE PROTECTION; AND WOLF TRAP REPAYMENT TERMS RESTRUCTURING

HEARING

BEFORE THE

SUBCOMMITTEE ON
PUBLIC LANDS, NATIONAL PARKS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 844, H.R. 1484, S. 1360, H.R. 2844, AND S. 1859

FEBRUARY 21, 1990

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE

28-898 WASHINGTON : 1990

For sale by the Superintendent of Documents, Congressional Sales Office
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S311-25

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CONTENTS

	Page
S. 844	4
H.R. 1484	12
S. 1360	16
H.R. 2844	22
S. 1859	28

STATEMENTS

Bradley, Hon. Bill, U.S. Senator from New Jersey	1
Bumpers, Hon. Dale, U.S. Senator from Arkansas	30
Camp, John C., Wolf Trap Foundation for the Performing Arts	109
Garn, Hon. Jake, U.S. Senator from Utah	37
Harriman, Constance B., Assistant Secretary for Fish and Wildlife, Department of the Interior, accompanied by James Ridenour and Robert Stanton on:	
S. 844 and H.R. 1484	48
S. 1859	68
S. 1360 and H.R. 2844	75
Lienesch, William C., Director, Federal Activities, National Parks and Conservation Association	90
McClure, Hon. James A., U.S. Senator from Idaho	35
Sobel, Jack A., director, Center for Marine Conservation	102
Stanton, Robert, Regional Director, National Capital Region, National Park Service, Department of the Interior	70
Wallop, Hon. Malcolm, U.S. Senator from Wyoming	42
Walter, J. Jackson, president, National Trust for Historic Preservation	97
Warner, Hon. John, U.S. Senator from Virginia	62
Whitney, Steven C., director, National Parks Program, the Wilderness Society	81

APPENDIX

Additional material submitted for the record	129

NATIONAL PARK SYSTEM REVIEW BOARD; PARK MARINE RESOURCE PROTECTION; AND WOLF TRAP REPAYMENT TERMS RESTRUCTURING

WEDNESDAY, FEBRUARY 21, 1990

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:03 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Bill Bradley, presiding.

OPENING STATEMENT OF HON. BILL BRADLEY, U.S. SENATOR FROM NEW JERSEY

Senator BRADLEY. The hearing will come to order.

The purpose of today's hearing is to receive testimony on several measures currently pending before this Subcommittee on Public Lands, National Parks and Forests. The bills are S. 844 and H.R. 1484, to establish a national park system review board, S. 1360 and H.R. 2844, to protect the marine resources within the national park system, and S. 1859 to restructure loan payment terms and conditions for the reconstruction of the Filene Center at the Wolf Trap Farm Park.

Before proceeding with the first witnesses, I would like to offer a few comments on S. 844. Our national parks are unique, and they grew from an enlightened vision which acknowledged that the land's importance was for all of us. We have set aside vast amounts of land from seashores to mountaintops.

We celebrate particular places interwoven with our history. The battlefield of Gettysburg—which I and my family visited last weekend—the Statue of Liberty which is in New Jersey, and Ford's Theater which is right here inWashington.

We entrust these lands and this cultural heritage to the National Park Service to protect and foster. The job is a critical one, because every year the concrete creeps closer, the subdivisions move nearer, the pesticides and herbicides pollute more waters.

When the national parks were created, they were created for us and our children and their children's children. And if what is available today is lost through lack of resolve or mismanagement,

it will be one of those things that is lost forever. The battle to keep a standard of excellence in our parks is difficult and complex.

More and more, the issues which shape parks grow from local to regional to national. Because of this interaction, the decisions that are made become increasingly political. This is, of course, neither unexpected nor necessarily unwise. The successful resolution of conflicting interest almost always demands some kind of compromise, which is the essence of what we do here and in the administration—political decision-making.

However, to weave politics and compromise into the mission of the Park Service is a perilous threat to this common heritage. If politics or compromise is to be a part of the policy calculus, it should enter the equation directly in my view, in the full light of day.

We should never expect or hope that the National Park Service adopts an agenda which is less than complete or flawed by external pressure.

This legislation, S. 844, emphasizes an independent National Park Service. The bill creates a three-person review board, the members of which will be appointed by the President to staggered four-year terms. The Park Service director would be appointed by the President and serve for a term of five years. The director could be renominated or could serve, but could serve only two consecutive terms.

The review board would report annually to the President and Congress on the management of the budget of the Park Service. The board would address the resource needs of the Park Service and make recommendations that best serve the mission of the Park Service and the American public.

The bill's purpose is simple: to create a safeguard against subtle or less than subtle political meddling or compromise which threatens the fabric of the park system. Obviously this bill does not remove the Park Service from the direction of the President. The President nominates all the members of the board and the director.

Nor is this intended as an indictment of this or any other administration's practices or policies. Whether the bill deals with issues that would inevitably be raised regardless of the political persuasion of who occupies the White House.

Frankly, the bill is not complicated. There is no hidden agenda. The legislation seeks to maintain the standard of excellence that has characterized the national park system over its long history. The President needs to maintain a dedicated corp of Park Service employees. The Congress needs clear information and guidance. The Park Service needs consistent direction and purpose.

A Park Service muzzled by political whim is of no use to the American public or the Congress. This bill modestly is a necessary first step to respond to complex problems.

I would, if I could, like to remind witnesses today to please summarize your testimony and to limit your oral remarks to no more than five minutes. Your entire written statement will be made a part of the hearing record.

And at this time I would like to place copies of all five measures in the hearing record.

[The texts of the bills and statements of Senators Bumpers and Bradley follow:]

II

101ST CONGRESS
1ST SESSION

S. 844

To establish a National Park System Review Board, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 19 (legislative day, JANUARY 3), 1989

Mr. BRADLEY introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To establish a National Park System Review Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NATIONAL PARK SYSTEM REVIEW BOARD.

(a) ESTABLISHMENT AND FUNCTIONS.—

(1) ESTABLISHMENT.—There is hereby established a National Park System Review Board (hereinafter in this Act referred to as the "Board").

(2) FUNCTIONS.—The Board shall maintain a continuing review of programs and activities of the National Park Service and of existing and proposed national park system units.

(3) REPORTS.—The Board shall transmit to the President and to each House of the Congress an annual report containing the results of its review, together with any recommendations for the management of the national park system or any proposed additions to such system, as it considers appropriate. Concurrently with the submission of the annual budget of the United States by the President, the Board shall submit to the President and to the Congress budget recommendations for the National Park Service and for the Board. Notwithstanding any other provision of law or any rule, regulation, or policy directive, the Board shall transmit such annual report and budget recommendations, and provide any other information on the request of any committee or subcommittee of Congress, by report, testimony, or otherwise, without review, clearance, or approval by any other administrative authority except to the extent that the Board may deem such review, clearance, or approval appropriate.

(b) MEMBERSHIP AND TERMS OF OFFICE.—The President shall appoint members of the Board from among persons who, because of education or experience, are considered knowledgeable regarding policy issues affecting the natural or cultural resources of the Nation. The Board shall consist of 3 members serving for terms of 4 years, except that the

terms of the members first taking office shall expire (as designated by the President at the time of appointment) as follows: one member after 3 years, one member after 5 years, and one member after 7 years. Members of the Board may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(c) ADMINISTRATIVE PROVISIONS.—The Board shall elect a Chairman from among its members. A majority of the Board serving at any one time shall constitute a quorum for the transaction of business. The Board shall have an official seal, which shall be judicially noticed. The Board shall meet at the call of the Chairman. Any member of the Board may, with the authorization of the Chairman, conduct public meetings. There shall be at least 6 meetings of the Board each year. In carrying out its functions, the Board may adopt bylaws, rules, and regulations necessary for the administration of its functions and may contract for any necessary services.

(d) PUBLIC MEETINGS; PUBLIC COMMENT.—All meetings of the Board shall be open to the public and the Board shall solicit, and review, public comments on all recommendations to be made by the Board.

(e) COMPENSATION.—Members of the Board shall each be paid annual compensation at a rate equal to the rate of basic pay payable for level V of the Executive Schedule. While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(f) STAFF; EXPERTS AND CONSULTANTS.—

(1) STAFF.—The Board may appoint and fix the pay of such personnel as it considers appropriate, including at least a chief of staff, a secretary to the Board, a legal counsel, 5 investigators, and 10 support staff. The staff shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(2) EXPERTS AND CONSULTANTS.—The Board may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed basic pay

payable for GS–13 of the General Schedule. Upon request of the Board, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Board to assist the Board in carrying out its duties under this Act.

(g) OBTAINING DATA.—Notwithstanding section 552 through 552b of title 5 of the United States Code, the Board may secure directly from the National Park Service information necessary to enable it to carry out this Act. Upon request of the Chairman of the Board, the Director of the National Park Service shall furnish such information to the Board.

(h) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Board on a reimbursable basis such administrative support services as the Board may request. The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

SEC. 2. NATIONAL PARK SERVICE.

(a) DIRECTOR OF NATIONAL PARK SERVICE.—There shall be within the Department of the Interior, a National Park Service headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, from among persons qualified, by training and experience and by demonstrated ability, to administer, protect, and

preserve the natural and cultural resources of the United States. The Director shall be paid at the rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5 of the United States Code. The Director shall hold office for a term of 5 years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. No Director shall be appointed to more than two consecutive terms.

(b) FUNCTIONS.—On the date of enactment of this Act, the Secretary of the Interior shall delegate to the Director of the National Park Service appointed under this Act all functions and authorities of the Secretary regarding the administration of the national park system and all other functions and authorities exercised by the Director of the National Park Service as of July 1, 1988. The Secretary shall retain all authorities not so delegated and shall have the authority and responsibility in the budget of the National Park Service and to convey information regarding the national park system to the cabinet. In the performance of his functions, the Director and the officers and employees of the National Park Service shall not be responsible to, or subject to the supervision or direction of, any officer or employee, or agent of any other part of the Department of the Interior.

(c) EMPLOYEES.—

(1) APPOINTMENT AND COMPENSATION.—The Director shall appoint and fix the compensation of all officers and employees of the National Park Service. The Director shall appoint the following three Deputy Directors from among the professional employees of the National Park Service—

(A) a Deputy Director of the National Park Service;

(B) a Deputy Director of Historic Preservation and Cultural Resources; and

(C) a Deputy Director in recreation, conservation, and open space.

(2) TRANSFER OF PERSONNEL.—Upon appointment of the Director of the National Park Service under this Act, the Director of the Office of Management and Budget shall provide for the transfer to the administrative jurisdiction of such Director to such personnel, property, funds, and records of the service created by the first section of the Act approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1), as are under the administrative jurisdiction of the Department of the Interior. Salaries, grades, and benefits of employees so transferred shall not be affected adversely thereby, except that no employee of the National Park

Service shall be appointed from or under schedules excepted from the competitive Civil Service.

(3) PERFORMANCE APPRAISALS.—No person whose position has been excepted from the competitive service, other than the Director or an individual holding a senior executive position, may conduct, or participate in the conduct of, any performance appraisal under chapter 43 of title 5 of the United States Code for any officer or employee of the National Park Service.

(d) INDEPENDENCE IN PROVIDING BUDGET AND OTHER INFORMATION.—Notwithstanding any other provision of law or any rule, regulation, or policy directive, the Director may transmit the budget request recommended by him for the National Park Service to the Congress, and provide any other information on the request of any committee or subcommittee of Congress, by report, testimony, or otherwise, without review, clearance, or approval by any other administrative authority.

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II

101ST CONGRESS
1ST SESSION

H. R. 1484

IN THE SENATE OF THE UNITED STATES

JULY 19 (legislative day, JANUARY 3), 1989
Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To establish a National Park System Review Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NATIONAL PARK SERVICE.

(a) DIRECTOR OF NATIONAL PARK SERVICE.—There shall be within the Department of the Interior, a National Park Service headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate; from among persons qualified, by training and experience and by demonstrated ability, to administer, protect, and

preserve the natural and cultural resources of the United States. The Director shall be paid at the rate not to exceed the rate of basic pay payable for level IV of the Executive Schedule under section 5316 of title 5 of the United States Code. The Director shall hold office for a term of five years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

(b) FUNCTIONS.—On the effective date of this Act, all functions and authorities of the Secretary which are carried out through the National Park Service as of July 1, 1988, shall be transferred to and vested in the Director of the National Park Service appointed under this Act, except that the Secretary shall retain the authority and responsibility for the budget of the National Park Service and for conveying information regarding the National Park System to and from the Cabinet. In the performance of his functions, the Director and the officers and employees of the National Park Service shall not be responsible to, or subject to the supervision or direction of, any officer or employee, or agent of any other part of the Department of the Interior.

(c) EMPLOYEES.—The Director shall appoint and fix the compensation of all officers and employees of the National Park Service. The Director shall appoint the following: three Deputy Directors from among the professional employees of the National Park Service; a Deputy Director of the

National Park Service; a Deputy Director of Historic Preservation and Cultural Resources; and a Deputy Director for Recreation, Conservation, and Open Space. Salaries, grades, and benefits of employees so transferred shall not be affected adversely thereby, except that no employee of the National Park Service shall be appointed from or under schedules excepted from the competitive service. No person whose position has been excepted from the competitive service, other than the Director or an individual holding a Senior Executive Service position, may conduct, or participate in the conduct of, any performance appraisal under chapter 43 of title 5 of the United States Code for any officer or employee of the National Park Service.

(d) TRANSFERS.—Upon appointment of the Director of the National Park Service under this Act, the Director of the Office of Management and Budget shall provide for the transfer to the administrative jurisdiction of such Director such of the personnel, property, funds, and records of the service created by the first section of the Act approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1), as are under the administrative jurisdiction of the Department of the Interior.

(e) INDEPENDENCE IN PROVIDING INFORMATION.—Notwithstanding any other provision of law or any rule, regulation, or policy directive, the Director shall provide any information on the request of any committee or subcommittee

of Congress, by report, testimony, or otherwise, without review, clearance, or approval by any other administrative authority.

Passed the House of Representatives July 17, 1989.

Attest: DONNALD K. ANDERSON,

Clerk.

II

101ST CONGRESS
1ST SESSION

S. 1360

To provide for the protection of certain National Park System resources, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 20 (legislative day, JANUARY 3), 1989

Mr. BUMPERS introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To provide for the protection of certain National Park System resources, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PARK SYSTEM RESOURCES.

(a) DEFINITIONS.—As used in this Act—

(1) DAMAGES.—The term "damages" includes—

(A) compensation for—

(i)(I) the cost of replacing, restoring, or acquiring the equivalent of a park system resource; and

(II) the value of any significant loss of use of a park system resource pending its restoration or replacement or the acquisition of an equivalent resource; or

(ii) the value of the park system resource in the event the resource cannot be replaced or restored; and

(B) the cost of assessments under subsection (d).

(2) RESPONSE COSTS.—The term "response costs" means the costs of actions taken by the Secretary of the Interior to prevent or minimize destruction or loss of or injury to park system resources; or to abate or minimize the imminent risk of such destruction, loss, or injury; or to monitor ongoing effects of incidents causing such destruction, loss, or injury.

(3) PARK SYSTEM RESOURCE.—The term "park system resource" means any living or nonliving resource that is located within or is a living part of a marine regimen or a Great Lakes aquatic regimen (including an aquatic regimen within Voyageurs National Park) within the boundaries of a unit of the National Park System.

(4) REGIMEN.—The term "regimen" means a water column and submerged lands, up to the high-tide or high-water line.

(b) LIABILITY.—

(1) IN GENERAL.—Subject to paragraph (3), any person who destroys, causes the loss of, or injures any park system resource to a greater than de minimis extent is liable to the United States for response costs and damages resulting from such destruction, loss, or injury.

(2) LIABILITY IN REM.—Any instrumentality, including but not limited to a vessel, vehicle, aircraft, or other equipment that destroys, causes the loss of, or injures any park system resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury to the same extent as is a reason described in paragraph (1).

(3) DEFENSES.—A person is not liable under this subsection if—

(A) that person can establish that the destruction or loss of, or injury to, the park system resource was caused solely by an act of God, an act of war, or an act or omission of a third party other than an employee or agent of the allegedly liable person or a party (other than a common

carrier) whose act or omission occurred in a contractual relationship with the allegedly liable person, and that the person acted with due care.

(B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law; or

(C) the destruction, loss, or injury was of a de minimis nature.

(c) CIVIL ACTIONS FOR RESPONSE COSTS AND DAMAGES.—The Attorney General of the United States, upon request of the Secretary of the Interior after a finding by the Secretary of greater than de minimis damages to a park system resource, may commence a civil action in the United States district court for the appropriate district against any person who may be liable under subsection (b) for response costs and damages. The Secretary, acting as trustee for park system resources on behalf of the United States, shall submit a request for such an action to the Attorney General whenever a person may be liable for such costs or damages.

(d) RESPONSE ACTIONS AND ASSESSMENT OF DAMAGES.—

(1) RESPONSE ACTIONS.—The Secretary of the Interior may undertake all necessary actions to prevent or minimize the destruction or loss of, or injury to,

park system resources, or to minimize the imminent risk of such destruction, loss, or injury.

(2) ASSESSMENT OF DAMAGES.—The Secretary shall assess and monitor damages to park system resource.

(e) USE OF RECOVERED AMOUNTS.—Response costs and damages recovered by the Secretary under this section shall be retained by the Secretary and without further congressional action may be used as follows:

(1) RESPONSE COSTS AND DAMAGE ASSESSMENTS.—Twenty percent of amounts recovered under this section shall be used to finance response costs and damage assessments by the Secretary.

(2) RESTORATION, REPLACEMENT, MANAGEMENT, AND IMPROVEMENT.—Amounts remaining after the operation of paragraph (1) shall be used, in order of priority—

(A) to restore, replace, or acquire the equivalent of park system resources which were the subject of the action and to monitor and study such park system resources; and

(B) to manage and improve the National Park System unit of which such park system resources are a part.

SEC. 2. INJUNCTIVE RELIEF.

If the Secretary of the Interior determines that there is an imminent risk of destruction or loss of or injury to a park system resource, or that there has been actual destruction or loss of or injury to such resource which may give rise to liability under section 2, the Attorney General of the United States, upon request of the Secretary, shall seek to obtain such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to restore or replace the resource, or both. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

SEC. 3. DONATIONS.

The Secretary of the Interior may accept donations of money or services for expenditure or employment to meet expected, immediate, or ongoing response costs. Such donations may be expended or employed at any time after their acceptance, without further action by the Congress.

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II

101ST CONGRESS
1ST SESSION

H. R. 2844

IN THE SENATE OF THE UNITED STATES

JULY 20 (legislative day, JANUARY 3), 1989
Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To improve the ability of the Secretary of the Interior to properly manage certain resources of the National Park System.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PARK SYSTEM RESOURCES.

(a) DEFINITIONS.—As used in this Act—

(1) DAMAGES.—The term "damages" includes the following:

(A) Compensation for—

(i)(I) the cost of placing, restoring, or acquiring the equivalent of a park system resource; and

(II) the value of any significant loss of use of a park system resource pending its restoration or replacement or the acquisition of an equivalent resource; or

(ii) the value of the park system resource in the event the resource cannot be replaced or restored.

(B) The cost of assessments under subsection (d).

(2) RESPONSE COSTS.—The term "response costs" means the costs of actions taken by the Secretary of the Interior to prevent or minimize destruction or loss of or injury to park system resources; or to abate or minimize the imminent risk of such destruction, loss, or injury; or to monitor ongoing effects of incidents causing such destruction, loss, or injury.

(3) PARK SYSTEM RESOURCE.—The term "park system resource" means any living or nonliving resource that is located within or is a living part of a marine regimen or a Great Lakes aquatic regimen (including an aquatic regimen within Voyageurs National Park) within the boundaries of a unit of the National Park System.

(4) REGIMEN.—The term "regimen" means a water column and submerged lands, up to the high-tide or high-water line.

(b) LIABILITY.—

(1) IN GENERAL.—Subject to paragraph (3), any person who destroys, causes the loss of, or injures any park system resource to a greater than de minimis extent is liable to the United States for response costs and damages resulting from such destruction, loss, or injury.

(2) LIABILITY IN REM.—Any instrumentality, including but not limited to a vessel, vehicle, aircraft, or other equipment that destroys, causes the loss of, or injures any park system resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury to the same extent as is a person described in paragraph (1).

(3) DEFENSES.—A person is not liable under this subsection if—

(A) that person can establish that the destruction or loss of, or injury to, the park system resource was caused solely by an act of God, an act of war, or an act or omission of a third party other than an employee or agent of the allegedly liable person or a party (other than a common

carrier) whose act or omission occurred in a contractual relationship with the allegedly liable person, and that the person acted with due care;

(B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law; or

(C) the destruction, loss, or injury was of a de minimus nature.

(c) CIVIL ACTIONS FOR RESPONSE COSTS AND DAMAGES.—The Attorney General of the United States, upon request of the Secretary of the Interior after a finding by the Secretary of greater than de minimus damages to a park system resource, may commence a civil action in the United States district court for the appropriate district against any person who may be liable under subsection (b) for response costs and damages. The Secretary, acting as trustee for park system resources on behalf of the United States, shall submit a request for such an action to the Attorney General whenever a person may be liable for such costs or damages.

(d) RESPONSE ACTIONS AND ASSESSMENT OF DAMAGES.—

(1) RESOURCE ACTIONS.—The Secretary of the Interior may undertake all necessary actions to prevent or minimize the destruction or loss of, or injury to,

park system resources, or to minimize the imminent risk of such destruction, loss, or injury.

(2) ASSESSMENT OF DAMAGES.—The Secretary shall assess and monitor damages to park system resource.

(e) USE OF RECOVERED AMOUNTS.—Response costs and damages recovered by the Secretary under this section shall be retained by the Secretary and without further congressional action may be used as follows:

(1) RESPONSE COSTS AND DAMAGE ASSESSMENTS.—Twenty percent of amounts recovered under this section shall be used to finance response costs and damage assessments by the Secretary.

(2) RESTORATION, REPLACEMENT, MANAGEMENT, AND IMPROVEMENT.—Amounts remaining after the operation of paragraph (1) shall be used, in order of priority—

(A) to restore, replace, or acquire the equivalent of park system resources which were the subject of the action and to monitor and study such park system resources; and

(B) to manage and improve the National Park System unit of which such park system resources are a part.

SEC. 2. INJUNCTIVE RELIEF.

If the Secretary of the Interior determines that there is an imminent risk of destruction or loss of or injury to a park system resource, or that there has been actual destruction or loss of or injury to such resource which may give rise to liability under section 1, the Attorney General of the United States, upon request of the Secretary, shall seek to obtain such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to restore or replace the resource, or both. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

SEC. 3. DONATIONS.

The Secretary of the Interior may accept donations of money or services for expenditure or employment to meet expected, immediate, or ongoing response costs. Such donations may be expanded or employed at any time after their acceptance, without further action by the Congress.

Passed the House of Representatives July 19, 1989.

Attest: DONNALD K. ANDERSON,

Clerk.

II

101ST CONGRESS
1ST SESSION

S. 1859

To restructure repayment terms and conditions for loans made by the Secretary of the Interior to the Wolf Trap Foundation for the Performing Arts for the reconstruction of the Filene Center in Wolf Trap Farm Park in Fairfax County, Virginia, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8 (legislative day, NOVEMBER 6), 1989

Mr. WARNER (for himself, Mr. ROBB, Mr. JOHNSTON, and Mr. MCCLURE) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To restructure repayment terms and conditions for loans made by the Secretary of the Interior to the Wolf Trap Foundation for the Performing Arts for the reconstruction of the Filene Center in Wolf Trap Farm Park in Fairfax County, Virginia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of subsection (b) of Public Law 99–310, as amended (16 U.S.C. 284c) the terms and conditions of any unpaid obligations of the Wolf Trap Foundation for the Performing Arts (hereinafter referred to as the "Foundation") resulting from loans made by the Sec-

retary of the Interior (hereinafter referred to as the "Secretary") to the Foundation to complete reconstruction of the Filene Center of the Wolf Trap Farm Park in Fairfax County, Virginia are hereby restructured as follows:

(a) The Secretary shall waive repayment obligations for one-half of the total amount owed by the Foundation in principal and interest as of the date of enactment of this Act.

(b) The Secretary shall not assess interest on any remaining unpaid obligations owed by the Foundation after the date of enactment of this Act.

(c) Any remaining unpaid obligations shall be repaid in full by the Foundation within 10 years after the date of enactment of this Act with cash, property, or credits. Such credits are to be jointly determined by the Foundation and the Secretary, and may be derived and created by the foundation in its continuing educational programs for the Wolf Trap Opera Company, Wolf Trap Institute for Early Learning through the Arts, and the programs and activities of the Education Division.

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STATEMENT BY THE HONORABLE DALE BUMPERS

THE PURPOSE OF THE HEARING THIS AFTERNOON IS TO CONSIDER SEVERAL MEASURES CURRENTLY PENDING BEFORE THE SUBCOMMITTEE. S. 844, AND ITS COMPANION MEASURE H.R. 1484, WOULD RESTRUCTURE THE NATIONAL PARK SERVICE TO PROVIDE MORE INDEPENDENCE FOR THAT AGENCY; S. 1360, AND ITS COMPANION H.R. 2844, ADDRESS POTENTIAL DAMAGE TO MARINE RESOURCES LOCATED WITHIN UNITS OF THE NATIONAL PARK SYSTEM; AND S. 1859 WOULD ADJUST THE REPAYMENT TERMS AND CONDITIONS FOR LOANS MADE BY THE SECRETARY OF THE INTERIOR TO THE WOLF TRAP FOUNDATION.

I AM THE SPONSOR OF S. 1360, LEGISLATION WHICH WOULD ENHANCE THE PROTECTION OF MARITIME RESOURCES LOCATED INSIDE UNITS OF THE NATIONAL PARK SYSTEM. THIS LEGISLATION WAS ORIGINALLY INCLUDED AS TITLE II OF H.R. 1485, A BILL TO CONVEY CERTAIN BLM LANDS IN THE STATE OF NEVADA TO THE KERR-MCGEE CORPORATION TO CONSTRUCT FACILITIES FOR THE PRODUCTION OF AMMONIUM PERCLORATE - A KEY COMPONENT OF SOLID ROCKET BOOSTER FUEL.

AT THE TIME THE SENATE CONSIDERED THE NEVADA LAND CONVEYANCE LEGISLATION, WE HAD NOT CONSIDERED THE PORTION OF THE BILL DEALING WITH MARINE RESOURCES. CONSEQUENTLY, WHEN WE REPORTED THE NEVADA LEGISLATION, WE DELETED THESE PROVISIONS. AT THE TIME, HOWEVER, I TOLD CONGRESSMAN VENTO, CHAIRMAN OF THE HOUSE PUBLIC LANDS SUBCOMMITTEE, THAT I WOULD INTRODUCE THE MARINE RESOURCES PROTECTION LEGISLATION AS A FREE-STANDING BILL AND THAT WE WOULD CONSIDER IT EXPEDITIOUSLY. IN THE MEANTIME THE HOUSE

PASSED H.R. 2844, WHICH IS ALMOST IDENTICAL TO SENATE BILL.

I AM VERY PLEASED TO NOTE THAT, WITH SOME RELATIVELY MINOR CHANGES, THE ADMINISTRATION SUPPORTS THE ENACTMENT OF THESE PROPOSALS. IT IS MY HOPE THAT THE COMMITTEE CAN ACT FAVORABLY ON THIS LEGISLATION BEFORE THE MARCH RECESS.

FINALLY, I WANT TO THANK SENATOR BRADLEY FOR AGREEING TO CHAIR A PORTION OF THIS HEARING TODAY. HE IS THE SENATE SPONSOR OF THE NATIONAL PARK SYSTEM REVIEW BOARD LEGISLATION AND HAS ALSO BEEN VERY SUPPORTIVE OF THE MARINE RESOURCES PROTECTION LEGISLATION. I VERY MUCH APPRECIATE HIS INTEREST IN THESE MEASURES AND HIS WILLINGNESS TO CHAIR THIS HEARING.

BILL BRADLEY
NEW JERSEY

United States Senate
WASHINGTON, DC 20510

COMMITTEES:
FINANCE
ENERGY AND NATURAL RESOURCES
SELECT COMMITTEE ON INTELLIGENCE
SPECIAL COMMITTEE ON AGING

STATEMENT BY SENATOR BILL BRADLEY BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS COMMITTEE ON ENERGY AND NATURAL RESOURCES REGARDING S.844, THE NATIONAL PARK SYSTEM REVIEW BOARD BILL

February 21, 1990

The purpose of today's hearing is to receive testimony on several measures currently pending before the Subcommittee on Public Lands, National Parks, and Forests. The bills are:

S.844 and H.R.1484, to establish a National Park System Review Board;

S. 1360 and H.R.2844, to protect Marine resources within the National Park System; and

S.1859, to restructure loan repayment terms and conditions for the reconstruction of the Filene Center at Wolf Trap Farm Park.

Before proceeding with our first witness, I would like to comment on my legislation, S.844.

Our national parks are unique. The, grew from an enlightened vision which acknowledged the land's importance to all of us. We've set aside vast amounts of land, from seashores to mountain tops. We celebrate particular places interwoven with our history: the battlefield at Gettysburg, the Statue of Liberty, Ford's Theater. And we entrust these lands, this cultural heritage, to the National Park Service to protect and foster.

This job is a critical one. Every year, the concrete creeps closer. The subdivisions move nearer. Pesticides and herbicides pollute the waters. Today, there's even a man-made haze over the Grand Canyon. As Roderick Nash said, "Wild land will remain wild only as the result of human choice."

When the national parks were created, they were created for us, for our children and for our children's children. And, if what is available today is lost through lack of resolve or mismanagement, it will be lost forever.

The battle to keep a standard of excellence in our parks is difficult and complex. More and more, the issues which shape parks grow from local to regional to national. Because of this interaction, the decisions that are made become increasingly political. This is, of course, neither unexpected nor necessarily unwise. The successful resolution of conflicting interests almost always demands compromise, which is the essence of political decision-making. However, to weave politics and compromise into the mission of the Park Service is a perilous step and a threat to this common heritage.

If politics or compromise is to be part of the policy calculus, it should enter the equation directly, in the full light of day. We should never expect or hope that the National Park Service adopts an agenda which is less than complete or flawed by external pressure.

This legislation emphasizes an independent National Park Service. The bill creates a three-person Review Board. The members which will be appointed by the President to staggered four-year terms. The Park Service Director would be appointed by the President and serve for a term of five years. The Director could be renominated but could serve only two consecutive terms.

The Review Board would report annually to the President and Congress on the management and budget of the Park Service. The Board would address the resource needs of the Park Service and make recommendations that best serve the mission of the Park Service and the American public.

This bill's purpose is very simple: to create a safeguard against subtle or less-than-subtle political meddling or compromise which threatens the fabric of the Park System. Obviously, this bill does <u>not</u> remove the Park Service from the direction of the President. The President nominates all of the members of the Board and the Director. Nor is this bill intended as an indictment of this or any other Administration's practices. Rather, the bill deals with issues that would be inevitably raised, regardless of the political persuasion of the occupant of the White House.

This bill is not complicated. There's no hidden agenda. The legislation seeks to maintain the standard of excellence that has characterized the National Park System over its long history. The President needs to maintain a dedicated core of Park Service employees. The Congress needs clear information and guidance. The Park Service needs consistent direction and purpose. A Park Service muzzled by political whim is of no use to the American public or this Congress. This bill is a necessary first step in response to a complex problem.

I would like to remind our witnesses today to please summarize your testimony and to please limit your oral remarks to no more than five minutes. Your entire written statement will be made part of the hearing record. At this time, I will place copies of all five measures in the hearing record. The record will remain open for two weeks to receive additional comments and testimony.

Senator BRADLEY. The record will remain open for two weeks to receive additional comments and testimony. Let me also say that I appreciate that all of the witnesses have gotten their testimony in 24 hours prior to this meeting. It is much appreciated and all parties should know that I feel that sincerely.

Senator McClure.

STATEMENT OF HON. JAMES A. McCLURE, U.S. SENATOR FROM IDAHO

Senator MCCLURE. Mr. Chairman, let me be very brief. I have another meeting, as is often the case. We are trying to find some way to get a Clean Air Act bill passed. And we have been negotiating around the clock for the last two-and-a-half weeks. That effort goes forward, and I am bound to go assist in that effort.

I want to make two comments with respect to two of the legislative items; let me turn to the last one first, and then to the first one.

With respect to Wolf Trap and the restructuring of the debt, I am pleased to note that the administration supports the efforts that many of us are making, to find a solution to that dilemma which has been with us a long while. It can be solved, and I think this bill is a way to do it. And I look forward to the assistance which will be necessary to get that bill passed.

It is not without some dispute from other sources, but it is relatively without controversy. I hope we can get that accomplished in a prompt manner to take care of one of the park issues which has been with us for a long while. It has been with us and needs resolution, because it will be around forever, if we do not resolve it.

The second comment is with respect to the first bill, S. 844. And I want to cast the comments in a slightly different way. I will make reference to the fact that we have a tremendous dichotomy in our discussions in the Congress of the United States. This is not just a problem with the administration of the parks or the administration's approach to park administration. It is a very real dilemma within the Congress, as we struggle to match our appetite with real resources.

Now I do not need to reiterate what I have said so often over the years here, that we have a backlog of acquisitions which far exceeds our capacity to meet. And Congress keeps right on authorizing more actions than we have money to realize. The result is that we have created expectations, made promises we have no intention of keeping, have not kept the promises which were made, and people then, justifiably, point a finger of accusation. They far too often point it at the wrong place, because the dilemma and the problem lies within the Congress. It does not lie within the administration.

I think it is made up of more than one factor. One is, our real desire to do something which we cannot match with dollars. And the other are real political demands which lead us to over-promise what we are capable of doing and do not have the courage to say we cannot.

People found out a long time ago that you could buy votes by doing things which people want. Congress found out a long time

ago that you can buy votes by promising to do what people want and not really doing it. And so there is some reason when we point the finger—to recognize that three fingers point back at ourselves, whenever we point the finger—and Congress has a responsibility.

The second is that even among the dollars which are available for park resource acquisition and management, we have a tremendous difficulty managing well the units which we have and the dollars which are available. And again, that is not an administration problem. That is a congressional problem which we share with every other competing demand.

I get a little bit sick and tired of every special interest group in the country—and I am not pointing at anyone—but we tend to agree with every request of every special interest group, and then blame someone else for our failure to come up with the money.

In the early 1980s, there was a real attempt to address a real backlog of failure to manage—I almost said mismanage—a failure to manage Park Service assets, because we had not appropriated enough money to deal with them. We had public health menaces in our national park system. And everybody knows that.

Secretary Watt said, we are going to change that. And he diverted, and I supported that diversion of money from acquisitions to management, because it was necessary. And we put hundreds of millions of dollars in the management of parks, capital improvements, capital requirements and management requirements which was unmatched in its buildup in the last 20 years.

Now, I happen to believe that was right. I supported it. I give Secretary Watt credit for it. And I hope that we do not lose sight of the fact that we got into that problem during a period of time—which I also supported—of diverting assets to acquisitions, because they would get away from us if we did not.

That was a congressional decision. Congress made that policy choice. Congress created that management difficulty, and then we blame someone else. And I think that is unfair in the extreme. It disserves the American public, when they cannot understand what the problem is in our national parks. It is a fiscal problem, as we in the Congress of the United States keep complaining about the results but assigning our spending priorities somewhere else.

I am in a unique position to see that, because I have served as chairman and ranking member of the Interior and Related Agencies Appropriations Subcommittee. And I wrestle over the dollar results every year. And I wrestle with the congressional requests every year in that subcommittee. And it is just an impossible task.

But if we are going to be critical, let us also recognize that it is Congress which makes the assignments of resources. The administration makes requests, Congress makes the final resolution which the administration must then agree to in terms of appropriations bills.

But a large part of the problems which come up are not the result of any lack of administrative oversight, or any lack of administrative resolve which will not be solved, in my opinion, by creation of another administrative layer or checkpoint. It is really fiscally driven and we will not solve that problem by the creation of any board, any more oversight, any more input, if we cannot find a

way to solve the funding problem which is absolutely necessary to meet some of those problems.

Thank you, Mr. Chairman.

Senator BRADLEY. Thank you very much, Senator McClure.

Senator Garn.

STATEMENT OF HON. JAKE GARN, U.S. SENATOR FROM UTAH

Senator GARN. Thank you, Mr. Chairman.

As usual, I need to be at another meeting, so I will be brief and submit a much more detailed statement for the record. But I certainly wanted to appear here today and oppose S. 844 and 1484.

I simply cannot support making the National Park Service an independent agency and take it out from the jurisdiction of the Secretary of the Interior. I think the bill would take away legitimate congressional oversight. We certainly do not need another unresponsive independent agency.

In Utah we have five national parks, four national monuments, one Park Service-administered national recreation area, and I do believe that in a representative form of government, political oversight is essential. The National Park Service needs to be held accountable to the people of Utah as well as to people of other states.

But I mention my state particularly for two reasons. One, that is the only state I represent, and secondly, that we have such a large preponderance of Park System units. Some states have no national parks. We are fortunate enough to have five.

So I will follow up, as I said, with a more detailed statement. But I am very much opposed to creating another independent agency.

Thank you, Mr. Chairman.

[The prepared statement of Senator Garn follows:]

Statement on S. 844 & H.R. 1484

by Senator Jake Garn

February 21, 1990

Mr. Chairman, I appreciate this opportunity to express my views to you and the members of this Subcommittee today about an issue I feel very strongly about.

The proposal to take essential budgetary and policy making authority away from the Secretary of the Interior over the National Park Service is an ill-conceived idea which has the potential of harming my State of Utah. With Utah's five National Parks, four National Monuments, and one Park Service Administered National Recreation Area, political oversight of the National Park Service is essential.

During my 15 years in the Senate, I can not imagine a more destructive thought than to imagine if I had not been able to represent the concerns of the people of Utah over a National Park Service which was insulated from political oversight by reason of it being an Independent Agency. Mr. Chairman, just the thought of that is a nightmare to me. The activities of the National Park Service in Utah are so numerous, so controversial, so important, that we must leave that entity under the supervision

of the Executive Branch through the Secretary of Interior. If not, I can imagine certain Park Service bureaucrats telling me to "butt-out" or to "go fly a kite." That may be well and good for them, but Mr. Chairman, nobody elected them, they would be truly accountable to no one. Again, just the thought sends shivers up and down the spines of the people of rural Utah, the Governor, and me.

For example, when the Superintendent of Capital Reef National Park tried to kick descendants of pioneer families out of that Park by abolishing their 100 year old grazing privileges, what recourse would those people have had?

When the Superintendent of Zion National Park began imposing commuting fees without legal authority on local residents who had traversed the Park for 60 years in their cars, what recourse would they have had?

When the Park Service tried to impose some 19 "integral vistas" on the State of Utah, effectively putting one third of the land area of the State "off-limits" to any industrial development, what recourse would the Governor have had?

When the Park Service tried to ignore the rights of miners and livestock grazers in Glen Canyon National Recreation Area by proposing virtual abolition of such activities, even though the Glen Canyon enabling act specifically allowed mining and grazing

by statute, what recourse would I have had?

Mr. Chairman, every day one of my Utah offices receives an inquiry about some aspect of the operations of the National Park Service. These bills, (S.844 and H.R. 1484) while well intended I'm sure would have a crippling effect on my ability as an elected Senator to conduct necessary oversight to make certain the people who administer our Park Service areas are responsive to the people of Utah who live next to them.

I realize I may come across sounding negative here. I do not want to leave that impression. Our Utah National Parks are beautiful and deserve protection. Lets give the efforts of the National Park Service since 1916 when it was created, some credit. By and large the employees of the National Park Service do a very good job promoting and protecting these National treasures. But, occasionally, like the select examples I've just mentioned, Park Service personnel become overzealous in carrying out their responsibilities. When that happens, I take some comfort in knowing there is a Secretary of Interior who can bring balance to individual situations and solve problems in a fair minded way. My point is, the current system is working, not perfectly, but overall, <u>it is working.</u>

I would like to re-emphasize one final point in opposition to these two bills which may be more important than the parochial

concerns I have just explained. These bills represent one more erosive step by taking away the legitimate oversight responsibility of the Congress and the Administrate prerogatives of the President of the United States acting through one of his Constitutionally appointed Cabinet members. This is a serious erosion of these powers, it must be stopped. Every cabinet level agency has the same kinds of problems, yet our Constitutional system is not so broken down that we have made each of them Independent Agencies. When we reach that point, then heaven help us all. Thank you, Mr. Chairman for this opportunity to express my views on such an important matter as this.

Senator BRADLEY. Senator Wallop.

STATEMENT OF HON. MALCOLM WALLOP, U.S. SENATOR FROM WYOMING

Senator WALLOP. Mr. Chairman, let me begin by making the observation that this nation was founded on the basis of politics. That is the whole purpose for which we have elections. That is the whole purpose for which we have two parties, Houses of Congress and one thing and another which leads to the ability of this nation to govern itself.

To remove an entity from politics is to take a step back to the sort of government which we have seen fail in the Soviet Union. In fact, if the President is to be held accountable, then, he too must be able to be accountable. If he is not to be able to remove a director—which has already got political limits on it, I might add, should he wish to do such a thing—it is not possible to do that without encountering a political storm in one way or another.

If the President cannot oversee his administration—whether it is the National Park Service or any other segment of it—and that they are allowed to come directly to the Congress without review or any other constraint—then there is no way to hold that President accountable for what takes place in the National Park Service.

In fact, I mean that is an independent entity, a Czar, if you will, the park Czar. All of a sudden he is not accountable to any one. And I suggest that that is probably not what we want to do. And I must say that I have ongoing problems with the Park Service, and I have ongoing praise for the Park Service. And I do not anticipate that, no matter what you do, that is going to change.

There will always be some of us who would like to see some things done differently. And others of us who would like to see some levels of constraint upon its action. But that is why we have a Congress, and that is why we have a President, and that is why issues concerning the park are issues in a political campaign.

I just went through a campaign in which issues surrounding a park were highly at risk. The "let-it-burn policy" nearly destroyed my state. And it became a political issue—as well it should have—and it needed to be debated, and it has been researched. And lots of new understanding has taken place because of that.

So I do not fear politics in the National Park Service. In fact, I quite believe they belong there. And for whatever reasons we may wish to remove it from politics, I do not think they stand nearly as tall as those reasons for which we would like to have. Because there are moments in time, when Congress wishes to act and can, and can constrain, and can do all kinds of things.

There are options for the director of the National Park Service, too. And if he does not like the wishes and desires of his President, he can resign and make a political issue that way. And that too is an appropriate place for the dialogue concerning the management of these resources.

Wyoming takes no back seat to anybody. We had the first national park, the first national monument, the first national forest. Those are important to us as a state. And how those parks are run

are important to America, but they are also important to the people who live around the park units. And I want politics to be involved. Because that is the appropriate arena in a free society for the resolution of problems which people may determine to exist.

[The prepared statement of Senator Wallop follows:]

Malcolm Wallop

Opening Statement by Senator Malcolm Wallop
Subcommittee on Public Lands, National Parks and Forests
Hearing on National Park Service legislation
February 21, 1990

Mr. Chairman, thank you for scheduling this hearing to enable us to discuss the merits of legislation to establish a National Park Service Review Board, to protect National Park System marine resources, and to restructure loans made to Wolf Trap Farm Park.

I am very concerned with enacting S. 844 or H.R. 1484, both of which would supposedly de-politicize or "improve" the National Park Service. Improvement is a laudable goal, but I do not believe that enactment of either piece of legislation would in reality "de-politicize" or improve the Service. In fact, a case can be made that Presidential appointment and Senate confirmation would inevitably result in greater politicization than now exists. Congress presently has adequate opportunity to review and revise programs and budgets, and I see no reason to expand its powers in that regard. Of paramount importance to me is my firm belief that the President and the Secretary of the Interior should be in the position to appoint their own personnel who are accountable to the Chief Executive and who are charged with carrying out the President's policies.

Former Park Service Director Hartzog stated in his book <u>Battling</u>

for the National Parks that "A myth endures that the Park Service alone preserves the national parks. That is its aspiration, but not the reality." According to Director Hartzog, "The reality is that the people through their elected representatives in the Congress preserve the parks." The Congress, and especially this subcommittee, is the review board that establishes park policy and provides oversight. Furthermore, there is no guarantee that a review board would be any more or less forthcoming or responsive to Congressional concerns than the current Administration. Creating an appointed review board and additional staff would only place another layer of bureaucracy between the Congress and the Park Service, and further isolate the agency from the people.

The President does have Constitutional powers to shape his Administration's policy in many areas, and political appointment is one of the forms by which he implements his policies. Critics point to recent instances where political appointees have allegedly "meddled" in decisions made by professional resource managers; it is important to note that an equal case can be made that political appointees have contributed to more efficient management of the Park Service. It is interesting to note that if you object to the Administration's position, it is political meddling, but if you agree, then it is not. Secretaries Morton, Hickel, and Andrus did not meddle, but Secretaries Watt and Hodel did? Of course, Secretary Ickes never carried out President Roosevelt's agenda either.

The National Park Service has long fulfilled its mission through very different administrations since its establishment in 1916, and can continue to do so in an effective manner without this legislation.

In short, this bill is designed to achieve the wrong purpose -- eliminating politics from parks. Lively political debate, and the give-and-take needed to resolve disputes in an equitable manner, is an essential part of park management and good government. Park Service issues do not necessarily stop at the boundary lines of the units; and oftentimes these issues affect other agencies within Interior as well as other agencies in the Administration. We cannot afford to have the Park Service going off on their own tangent at the cost of other vital programs. The Administration requires a coordinated program where policy can be developed taking into consideration the needs of all the agencies. Had this legislation been on the books, we would not have had either George Hartzog or Russ Dickinson as Director. Stephen Mather probably wouldn't have made it past the first Administration review, much less been nominated.

Besides the practical reasons for which I oppose these two bills, I believe that several key provisions of the bills would violate the U.S. Constitution.

The two bills provide that the President would appoint the

Director to a five-year term, but could only remove him for cause. Without a doubt this "for cause" removal provision is designed to limit the President's ability to supervise the Director. As such, it runs afoul of the separation of powers principles by impermissibly infringing upon the President's constitutional mandate to ensure that the laws of the United States are faithfully executed.

Allowing the Director to transmit information to Congress "without review, clearance, or approval by any other administrative authority" also violates the separation of powers doctrine by undermining the President's power to supervise and review the work of his subordinates. In addition, Congress cannot require an executive branch officer to provide materials to Congress that are protected by executive privilege.

Finally, authorization for the Park Service Review Board to submit its own alternative Park Service budget to Congress would be constitutionally improper because the President has the absolute power to recommend measures to Congress and the exclusive right to speak for the entire executive branch.

Thank you, Mr. Chairman. I have several questions for the witnesses, and I will submit them for the record.

Senator BRADLEY. Thank you very much, Senator Wallop.

Let us begin with Constance Harriman, who is Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior. Welcome back to the committee. And if you can, please try to summarize—you know, we have a number of witnesses to get through. So if you can limit your comments to six or seven minutes I would appreciate that. And please do not draw any conclusions if I call the time at six or seven minutes.

STATEMENT OF CONSTANCE B. HARRIMAN, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, ON S. 844 AND H.R. 1484, ACCOMPANIED BY JAMES RIDENOUR, DIRECTOR, NATIONAL PARK SERVICE, AND ROBERT STANTON, REGIONAL DIRECTOR, NATIONAL CAPITAL REGION, NATIONAL PARK SERVICE

Ms. HARRIMAN. Mr. Chairman. I have with me today James Ridenour, Director of the National Park Service, and Bob Stanton, who is the Regional Director of the National Capital Region. They will answer any questions about bills with which they are familiar.

Because my statement is fairly long, I would like to offer it for the record.

Senator BRADLEY. It will be included in the record in full.

Ms. HARRIMAN. And I would like to simply summarize some key points.

Mr. Chairman, I am keenly aware of the stunning beauty and rich history contained in our National Park System. I have visited over 50 of our national parks. I am also acutely aware of the high degree of professionalism and dedication of the National Park Service professionals. I respect them.

As Assistant Secretary, I rely heavily on their views and recommendations. During my six months in office I have not overruled or disagreed with any of their recommendations. If you ask them, they will tell you that freely.

Mr. Chairman, this Administration has demonstrated and will continue to demonstrate its commitment to protecting America's precious natural, cultural, and historic resources. In introducing S. 844, you noted in the April 19, 1989, Congressional Record that often national park policies seem at odds with the preservation of our national heritage.

You said, "For example, this Administration refuses to provide significant funding for land acquisition, historic preservation or basic construction projects within national park units. The effect of these policies guarantee that precious resources will be lost forever."

I would like to note that in the President's budget for fiscal year 1991, there is a request for $80 million for park land acquisition, compared to $15 million requested by the previous Administration. The budget also includes approximately $34 million for historic preservation.

This is the first time in eight years that an Administration has requested any money for historic preservation. There are also significant increases requested for park operating bases and interpretive programs.

Since I have been in office, I have made several decisions that reflect my trust in and respect for the National Park Service. I have rescinded an earlier policy that required all employees to report any time that they had contacts with the Hill. I have redelegated travel approval to the Director. I have redelegated hiring and promotion decisions to the Director for GS–14s and below.

I have approved without change all of the SES performance ratings I have received from the National Park Service Director. I have also encouraged Director Ridenour to develop a proactive legislative agenda. He and his staff are working on one now. I am told that it contains approximately 60 proposed bills.

Mr. Chairman, S. 844 creates significant precedents in Federal administration. For example, unlike other land managing agencies, the National Park Service would not be subject to OMB and departmental review when reporting to Congress.

The Advisory Council on Historic Preservation is free of OMB review, but it is an advisory commission, not a land managing agency with a $1 billion budget. The Senate bill would cap the Director's tenure at two consecutive terms. We find no similar cap on bureau directors in other agencies.

Although the directors of the Fish and Wildlife Service and the Bureau of Land Management are appointed by the President and confirmed by the Senate, the Chief of the Forest Service is not. We see no overriding need for confirmation of the Park Service Director, when Congress has ample opportunity to exercise oversight of the Administration's policies through oversight hearings and confirmation of the Assistant Secretary and the Secretary of the Interior.

The bills permit the President or the Secretary to remove the Director only for malfeasance, inefficiency or neglect of duty. Other land managing agencies have no similar removal provisions. Because of the Director's five-year term and a change of administration, a President could not appoint his own Director and could not even respond to congressional concerns about the Director's policies.

More than reorganization, the National Park Service needs an advocate in the Department of the Interior and in the Administration.

Both bills do retain the Secretary's authority regarding reporting on the National Park System to the Cabinet. However, this is a passive function, not the advocacy that is needed. It is important for the National Park Service to operate within the Department of the Interior, because operating within the same agency encourages better communication between the land-managing agencies and a more immediate understanding of issues.

I believe it is my job to be an advocate of the National Park Service and, for the six months that I have been at the Department of the Interior, I have been. I can do it best if the Service remains a full partner at the Department of the Interior.

In conclusion, Mr. Chairman, I would like to emphasize that I am personally committed and this Administration is committed to the sound management and protection of park resources. The Secretary, Director Ridenour and I share this view.

We also believe that working with the Congress to identify priorities for protection and acquisition is a central part of our mission at the Department of the Interior. We want to cooperate with the Congress because we know that without your support we cannot do our jobs. We simply ask for the chance to prove our commitment to you. Thank you.

[The prepared statement of Ms. Harriman on S. 844 and H.R. 1484 follows:]

STATEMENT OF CONSTANCE B. HARRIMAN, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING S.844 AND H.R. 1484, BILLS TO ESTABLISH A NATIONAL PARK SYSTEM REVIEW BOARD.

February 21, 1990

Mr. Chairman, I appreciate the opportunity to provide your Subcommittee with the views of the Department on S.844 and H.R. 1484.

Mr. Chairman, I am opposed to creating the National Park Service as a separate entity outside the Department of the Interior. While these bills do not divorce the Service from Interior entirely, they go too far in that direction, in my judgment. I am authorized to re-iterate a position previously taken by this Administration, that is, if this legislation is presented to the President, the Secretary of the Interior, the Attorney General, and the Director of the Office of Management and Budget would recommend that he veto the bill.

S.844 would (1) establish a 3-person National Park System Review Board appointed by the President; (2) establish a 5-year term for the Director of the National Park Service and require appointment of the Director by the President and confirmation by the Senate; (3) provide for appointment by the Director of three Deputy Directors -- one for the National Park Service, one for Historic Preservation and Cultural Resources, and one for Recreation, Conservation, and Open Space -- and (4) transfer all functions carried out through the National Park Service from the Secretary of the Interior to the Director, except responsibility for the budget and conveying information to and from the Cabinet.

The Director and officers and employees of the Service would not be responsible to or subject to the supervision or direction of, any officer, employee, or agent of any other part of the Department; and the Director would be authorized to transmit his budget request to Congress and provide reports and testimony to Congress without clearance or approval by any other administrative authority.

H.R. 1484, which passed the House of Representatives on July 17, 1989, is similar to S.844, except that the House bill (1) would not establish the National Park

System Review Board (2) would compensate the Director at level IV instead of level V as in the Senate bill, and (3) does not limit the Director to two consecutive terms, as does the Senate bill.

Establishment of an independent Presidential board to oversee National Park Service operations, and removing the Director and other Service employees from the direction of the Secretary would not be consistent with good management.

To manage effectively, a Cabinet officer should have authority over operating programs. By delegating operational authority to the bureau directors, the Secretary can be assured of their accountability to him. The more that authority is diffused among bureau directors by statute, the less accountable they are to the Secretary for their programs.

The effect of Reorganization Plan Number 3 of 1950, adopted by President Truman pursuant to the Reorganization Act of 1949, was to transfer all functions of all officers in the Department of the Interior to the Secretary of the Interior. Prior to that reorganization, authority for operating programs was by law vested in the head of each bureau.

One of the purposes of the various reorganization plans of 1949 and 1950 was to consolidate program authority in the Cabinet, so that the President could hold a single officer accountable for all the programs of a department, rather than having to oversee many officers and programs personally. We believe that concept is basically sound.

These bills would effectively move the National Park Service back to where it was before 1950. It would leave the Secretary only with the authority to formulate and execute the official budget and convey information on the National Park System to the Cabinet. We believe sound management requires otherwise.

The Director's positions and programs must have the weight of Secretarial approval behind them. For example, we can attribute past success in developing standards for historic preservation to the active support of the Office of the Secretary.

We note that a portion of the legislation would provide for Presidential appointment and Senate confirmation of the Director. Mr. Chairman, we see no real difference in day-to-day operation that would result from having the Director of the National Park Service appointed by the President and confirmed by the Senate. However, both bills give the Director a statutory 5-year term, and they give the President removal authority only for inefficiency, neglect of duty, or malfeasance in office. A newly elected President would be unable to appoint the President's own Director. We believe the Director should reflect the President's views.

Turning to the proposed National Park System Review Board under S.844, its function would be to prepare an annual report to the President and Congress, including recommendations for management of the National Park System and recommendations for any additions to the System. The Board would also be required to submit budget recommendations for the National Park Service each year. None of its reports or recommendations would be subject to Administration review or clearance.

Mr. Chairman, there are mechanisms and institutions already in place by which Congress and the public can review the programs and budgets for the National Park System.

The National Park System Advisory Board was originally created by the Historic Sites Act of 1935 to advise the Secretary on matters relating to the National Park System. The Board meets twice yearly and its meetings are open to the public. The minutes of its meetings and its recommendations to the Secretary are also matters of public record and available to the Congress.

Each year, the Appropriations Subcommittees hold hearings on the programs and budget for the National Park Service. In addition, the Legislative Subcommittees hold oversight hearings from time to time on park and public land management programs.

In summary, Mr. Chairman, we see no need for another independent body, as would be established under S.844, to review park programs.

Moreover, both bills would exempt the Director from all review, clearance, and approval requirements regarding NPS budget requests and any other report or testimony requested by Congress. Such exemptions for the Director and the proposed review board would seriously impair the ability of the Secretary of the Interior and the President to fulfill their responsibilities with respect to management of the Executive branch.

I understand that the Department of Justice has very serious concerns about the constitutionality of these bills. The basis of these concerns is that the bills violate the separation of powers and impinge upon the Executive power of the President.

I am not prepared today to make these legal arguments, Mr. Chairman, but they do support my own conviction that either bill would be worse for the National Park Service and the resources we are charged with protecting.

This concludes my prepared testimony, Mr. Chairman. I would be pleased to respond to any questions you may have.

Senator BRADLEY. Thank you very much for your statement. I appreciate your willingness to come today to share your views.

I did not hear, what is your position? What is the position of the Department on S. 844 and H.R. 1484 and the other bills?

Ms. HARRIMAN. You are asking what our position is on this bill? We feel that this bill is unnecessary. We are opposed to it.

Senator BRADLEY. On S. 844, you oppose the bill?

Ms. HARRIMAN. Yes, we do.

Senator BRADLEY. On S. 1360?

Ms. HARRIMAN. Is that the House version?

Senator BRADLEY. No. You have come prepared just to talk about——

Ms. HARRIMAN. No. I am talking about all three, but I thought we were going to address them in sequence. Is that all right?

Senator BRADLEY. Sure. So you would prefer to have questions on S. 844 first?

Ms. HARRIMAN. That was my understanding. I will do it however you like.

Senator BRADLEY. Let me just ask you, is there any aspect of this bill that you think has some merit? [Laughter.]

Any aspect? I understand your general view. Let me help you.

Ms. HARRIMAN. I am trying to think.

Senator BRADLEY. Do you think that the Director of the National Park Service should be confirmed by the Senate, as we now do for the Bureau of Land Management and Fish and Wildlife Service directors?

Ms. HARRIMAN. As I said in my summary statement, I do not believe that it is necessary. There are other Bureau heads who are not, and I do feel that Congress has sufficient opportunity for oversight in the form of confirmation of the Assistant Secretary and Secretary and in oversight hearings.

Senator BRADLEY. Do you agree that the directors should be qualified by training experience and demonstrated ability to manage natural and cultural resources?

Ms. HARRIMAN. I do. And I think Director Ridenour is an example of someone who is.

Senator BRADLEY. You refer to the National Park System Advisory Board in your testimony, at least the testimony we got.

Ms. HARRIMAN. Yes.

Senator BRADLEY. Would you object to strengthening its role?

Ms. HARRIMAN. No, and in fact, under this Administration, I believe the Board has assumed a more active role. For example, something that the Secretary did early on was formulate a list of topics for the Board to address. It includes major issues like the Presidio, for example.

Senator BRADLEY. Would you object to requiring a report to Congress from the Advisory Board?

Ms. HARRIMAN. I am not sure why it would be necessary. The Board as it is structured now is to advise the Secretary.

Senator BRADLEY. But I am asking would you object to having it make a report to Congress?

Ms. HARRIMAN. I suppose yes, because frankly I do not——

Senator BRADLEY. You would object.

Ms. HARRIMAN. I would.

Senator BRADLEY. Would you object to the Board performing a review on budget priorities and resource management?

Ms. HARRIMAN. Yes.

Senator BRADLEY. What do you see now as the Board's purpose?

Ms. HARRIMAN. Excuse me one second.

I just want to clarify the board we are talking about right now is the National Park Advisory Board that is in existence.

Senator BRADLEY. That is right.

Ms. HARRIMAN. Could you repeat the question?

Senator BRADLEY. What do you see as the Board's purpose now?

Ms. HARRIMAN. The purpose now is for the Board to provide input from citizens to the Secretary to advise him on possible programs or policies that he might pursue.

Senator BRADLEY. Well, would you object to it performing a review of budget priorities and resource management?

Ms. HARRIMAN. That Board doing that?

Senator BRADLEY. Yes.

Ms. HARRIMAN. Yes, I would.

Senator BRADLEY. Would you object to a report to the Congress without OMB review? As I understand, that is what happens with the Advisory Council on Historic Preservation. Would you object to the same treatment for the Advisory Council of the National Park System?

Ms. HARRIMAN. I would not advise that, no.

Senator BRADLEY. Why?

Ms. HARRIMAN. Well, as I said, there is quite a difference between a land-managing agency that has a budget of over $1 billion and the tremendous responsibility to manage much of our public land that the Park Service has and the Advisory Council on Historic Preservation—of which I am a member, I might add—which has a considerably smaller budget and a very much narrower focus.

Senator BRADLEY. How would you view your responsibilities toward the Park Service as the Assistant Secretary?

Ms. HARRIMAN. As I said in my prepared remarks, I really believe that my single most important function is to be an advocate of both my Bureaus.

Senator BRADLEY. Has there ever been an instance where you have basically overridden the Park Service Director's decision?

Ms. HARRIMAN. As I said in my statement, no, there has not, unless something has slipped my mind, but not to my recollection.

Senator BRADLEY. Can you imagine such an instance?

Ms. HARRIMAN. Yes, I could imagine such an instance. I could imagine it, yes. It is possible.

Senator BRADLEY. Well, think.

Ms. HARRIMAN. Give you an example of something that I might overrule him on? It is hard to imagine.

Senator WALLOP. Mr. Chairman, I would say that that is a question clearly designed to lead the Assistant Secretary into some kind of a thicket. I am serious about that.

It is all hypothetical, you know. She has not had that occasion, yet, but clearly, if her job is to be the Managing Director of those various responsibilities underneath her, there could come a time when, through insubordination or through just clear policy disagreement that she would disagree, at which time the Director has

the simple obligation to say, you know, I saw it one way. He can resign over it, and is clearly possible in this town to let it be known that there was another point of view. I have never seen anybody reticent. Those things get out.

But in fact, if the Assistant Secretary is in charge, she is going to be held accountable for the behavior of something under her, she clearly has the option to direct it as she sees fit. To try to resolve it, to mitigate it or, in fact, just to overrule it. But who the hell knows what that would be until it occurs?

Senator BRADLEY. Okay, well, I take your point, Senator. Let me ask you then what is your role with respect to Park Service personnel?

Ms. HARRIMAN. The only real role that I perform with regard to Park Service personnel is that if the Director is making a recommendation about the promotion or appointment of someone who is a GS-15 or above, and—I do not have the exact figure, but perhaps he knows—that does not include very many superintendents out of the 354 park units that we have, for example. It is a very small number. I would see the Director's recommendation and I would either approve or reject that. I can say that I have received three to date, in the last six months, and with every one, I have agreed with it.

Senator BRADLEY. Okay, but specifically, do you think it is really appropriate to alter or influence personnel performance records? I assume the answer is no.

Ms. HARRIMAN. I am not sure what you mean by performance records. What do you mean?

Senator BRADLEY. Well, let us ask the Director.

Mr. RIDENOUR. Like an evaluation?

Senator BRADLEY. Do you think it is appropriate to alter or influence personnel performance records, evaluations?

Mr. RIDENOUR. Well, I think there are judgments that have to be made, and sometimes I am a first-line evaluator in some cases. And as I understand the process, and I am getting used to the Federal process as I am here, I make a recommendation which the Assistant Secretary looks at, might change or might not, and then it goes to a broader board that is peer oriented. And they also have a chance to make changes, as a matter of fact.

I know, for example, in this year's round, that the Assistant Secretary made no changes and changes were made at the peer group review level. So, there are a number of opportunities where those changes do take place, and I guess the reason they have it that way is that people see people in different lights. So I do not think that it is inappropriate that she would have that opportunity. I would hope that if that situation were to arise we would sit down and have a good discussion about why I made the judgment in the way I did and why she might disagree.

Senator BRADLEY. When you took over, was there a morale problem?

Mr. RIDENOUR. Yes, I would say that there was a serious morale problem.

Senator BRADLEY. How would you characterize that?

Mr. RIDENOUR. Well, it was one that not only related to the situations as you describe in the evaluation of personnel, but all across

the country, I think that there are problems associated with housing and with pay conditions, all the things we are trying to take on and do something about. And there were problems associated with just purely making the mechanism work, which is something that we are trying to work on.

Senator BRADLEY. And what have you done since discovering these?

Mr. RIDENOUR. I think one of the very good things that Assistant Secretary Harriman has done is delegate back much of the responsibility to the Park Service Director to take care of these actions so that we do not have a clogging up of our ability to manage by redelegating these issues to us, such as travel, such as appointment of personnel, things of this nature.

Senator BRADLEY. What about an issue that relates to, the opinions and views of professional resource managers? Essentially, these are views that are clearly stated in the process and they sometimes do not see the light of day and then you get into the leak game. And then you get into all of the other kind of inside politics.

Would it not be better just to have a straightforward accounting so that we do not have to go through the leak game?

Mr. RIDENOUR. Well, I guess I have a different perspective on that. Would the Senator forgive me if I would bring up an analogy that relates to the Senator's past in basketball games? [Laughter.]

Senator BRADLEY. I am sure I will understand it better.

Mr. RIDENOUR. We have had this discussion before and it goes back to talk about muzzling Park Service employees. And it seems to me I said this to our employees yesterday—there is a point that I cannot have 355 park superintendents standing up and saying they speak for the National Park Service. Just the same on the basketball team, you cannot have every player coming up with their plan to get that last second shot in. The coach makes the decision. And I think that is—that is management.

You know, that does not mean people get to have their chance to say something and get it out through the system, but when the final result is called, someone in the management structure makes that decision. You know, I have been a little bit confused when people say, well, Park Service employees are muzzled. I think there have been some unfortunate circumstances where there have been some miscommunications that did not get to the right places at the right time, purely, primarily, as I see it, out of mechanical error. I do not see that as a muzzling.

Senator BRADLEY. How are you intending to correct that?

Mr. RIDENOUR. Well we are trying to improve the flow of the process so that those kinds of things do not get held up somewhere on someone's desk for an overly long time, and do, in fact, appear in the record.

Senator BRADLEY. What specifically have you done?

Mr. RIDENOUR. Well, the example that people point to more recently has been the OCS discussion that was in Florida. As soon as we found out the comments of our superintendents had not been included in the hearing that was held in Washington, we had the record, or the Secretary had the record, reopened and we submitted those verbatim into the record. And we are just going to work

harder to make sure that kind of thing does not happen again in the future.

Senator BRADLEY. Okay. Let me ask one more question, then I know the other senators want to have their turn.

The point I think Senator Wallop alluded, to impairing the abilities of the President to make policy. You also alluded to it, Ms. Harriman, in your comments. But how do you see a Board which is authorized only to provide information and recommendations to the Congress and the President, only to provide recommendation and information, how does that impair the abilities of the President or the Secretary to perform their duties? The Board is not authorized to make Park Service policy, only recommendations and provide information.

Ms. HARRIMAN. I believe those recommendations have to do both with budget and with management of the Park Service, which I think strike right at the heart of what the Secretary and the President and the Director have to care about.

Senator BRADLEY. So information about those subjects is the problem? Recommendations about those subjects?

Ms. HARRIMAN. As I said earlier, I do not think that it really guarantees that things would be better, and I think that it interferes with a system that is working now and that has worked in the past.

Senator BRADLEY. All right. Let me, if I could, ask Senator Wallop or Senator Domenici if they would like to ask questions. If they would consider deferring until Senator Warner, who is our colleague and guest—would you mind waiting until this panel——

Senator WARNER. I would be happy to, Mr. Chairman.

Senator DOMENICI. Mr. Chairman, let me just say to you, in all frankness, and I do not think that I would have to say this because you probably know it, I have the greatest respect for you, but I think you are just wrong on this, and I really believe that you can accomplish your mission without doing this.

I just do not believe we ought to take a department under our Cabinet system with a function like the National Park Service, which essentially, if there have been some grievances and some mistakes, they ought to be corrected; but frankly, it is the superior entity of its type in the whole world. I think you will want to keep it that way.

Frankly, I think your approach might have more tendency to undo over the long run than to do. I just do not see how you can have a department like this under the Cabinet system functioning with an independent Board over here on the side. As much as you would want to limit it, as you start limiting it, it becomes irrelevant.

So you put things into it which are in direct conflict. Budgeting is one. Policy is one. If you want a temporary, three/four year advisory group, set it up. Make it independent of those issues, and let them address the issues of the National Park Service for the United States or National Parks and this entity.

But to put this in the middle of the functioning system seems to me extreme. And I do not think the problems are extreme. I do not belittle them, but I believe that you are going to find this adminis-

tration and this Cabinet Assistant Secretary responsive to this committee.

And I submit you, that if you have about 10 grievances, most of them are not from this administration, I do not think. I think you ought to submit it to them as we do in the normal course of oversight. If you are not satisfied with them, get the Secretary up here and say, now look, here is what we think has gone wrong in the past, can you assure us they are not going to continue, or can you explain to us on a regular basis how you are going to rectify them? Because I think all you want, from what I can understand, is the maintenance of the most professional people in this most professional of activities.

The National Park Service is not just running a bunch of parks. It is an exquisite function of this government. Do you know, when we find a problem out there in our country, and you do too, that you want real expertise to manage something and keep its historic value or recreate its historic value in a way that is a credit to everyone, who do we want? We want the National Park Service.

So I submit to you, I did not come to say that there have been no problems in this department, but I submit to you every major department under the Cabinet system, you could go pick some of its very difficult functions and we could say put an independent agency in between and let us get rid of some of the problems. I really believe, over the long run, that it will make problems worse.

And I do urge that you find another way to solve this problem other than this way.

Frankly, I do not believe the President would sign such a bill. I did not ask him that, but I just cannot imagine that he would. And I would like to be on your side. But I guarantee you, I cannot be on your side on this one, and I think we will have a number of senators who are not going to be on your side. So I think that we should solve the problem rather than find a solution which might have more built in long-term problems than the ones we are trying to solve.

And I thank you for calling the hearing. I thank those who are running this Department, on behalf of the President, for being here, and I think you ought to learn something today. To the extent that the legacy of this Department has some of these legitimate complaints, you ought to get rid of them. You ought to see to it that they are gone. You ought to see to it that this senator, as Chairman of this Subcommittee hearing today, is advised that you are not doing them anymore. He has a list of eight or 10. They are probably pretty germane to what concerns him.

So, that is my statement for the day and my recommendation to you, and my hope for you, that you will not proceed beyond getting what you really want, which is not this new group, but rather that they function as professionals and set in motion an operational activities which will assure you that it will occur.

Thank you, Mr. Chairman.

Senator BRADLEY. Thank you, very much, Senator Domenici, for your usual well conceived comment.

Senator WALLOP. Mr. Chairman, I want to begin by thanking Assistant Secretary Harriman for coming here. I am sorry Director Ridenour has left. I was going to ask him if he felt intimidated in

the role that he operates under. He did not look awfully intimidated to me. He did not look uncomfortable, as though he was under thumbscrews.

Senator BRADLEY. I do no know. I detected——

[Laughter.]

Senator WALLOP. Well, maybe I do not know him well enough to know when he is really cowed.

Let me also suggest that while the purposes of your bill are not to be quarrelled with, everybody wants a more superior Park Service and everybody can imagine ways in which it could take place. I would suggest to you that a couple of the greatest directors of the National Park Service would not have been there had these criteria been in place. George Hartzog comes to mind, who is still one of the classic directors of all time.

I would also say that Congress, as Senator McClure pointed out, has a role in what gets funded and what does not. Congress also has a hell of a big role in morale problems. And let me just cite one that comes to mind which I bitterly resented. That was when the management of Yellowstone Park bought and installed two or three hot tubs for the winter use of rangers who do not have winterized cabins, who do not have a whole lot of things for themselves, and those who have families too; the Park Service caught absolutely unshirted hell from the House Interior Committee for indulging in hot tubs. Can you imagine a ranger in a hot tub? Well, the answer is hell, yes, if it is 25 below zero and he has been out there for a long time, then I cannot imagine one not in one. [Laughter.]

But all of them felt it was unnecessary for Congress to load a dump of guilt on top of them because of that judgment of the superintendent of Yellowstone National Park.

Let me also say that "professional resource managers," "professional land managers," has an elegant ring to it. But they are humans, endowed by their creator with the inalienable right to be wrong just like other humans. I mean, they are not inevitably right because they are professional land managers. There are moments in time when their judgments must be questioned.

For the most part, I respect those in the Bureau of Land Management and in the Forest Service, but I can tell you from direct, personal experience, not all of them are terribly wise. Some are not. Most are.

I guess, Mr. Chairman, that is my purpose here, to agree with Senator Domenici that we have the ability to both determine what is not functioning and to try to work with it; and indeed, failing that, to insist upon, in the budget process, as with the legislative process, changes which we want to make. I would guess that while the rest of the world envies our system, we are not likely to change it.

Senator BRADLEY. Senator Wallop, thank you very much.

We have a long list of witnesses and I wondered if we could hear, at this time, from Senator Warner on S. 1859, and if you could just stay there, I am sure the senator would not mind because I would then like to have your opinion on S. 1859 and on S. 1360.

STATEMENT OF HON. JOHN WARNER, U.S. SENATOR FROM VIRGINIA

Senator WARNER. Mr. Chairman, I thank the courtesy of the Chair and the gentleman from Wyoming. As you can see, I have no voice, so that is going to limit my remarks to two or three minutes.

Mr. Chairman, as we walk or run through life, we meet extraordinary persons and persons we never forget. One in my lifetime has been Mrs. Shouse, whose vision, whose unselfishness and whose wisdom and tenacity created the Wolf Trap and the Wolf Trap Foundation.

I have been privileged to be sort of a private in the rear ranks of her crusade to provide a cultural center for all of those in the greater metropolitan Washington area, and we are fortunate that the decision was made to place this magnificent edifice in the Commonwealth of Virginia.

The fortunes of this institution have been challenged by acts of God, by the failure of technicians in a cracked beam, the acts of God being a fire, but somehow, we have managed to withstand these challenges, I like to think, through the wisdom of Mrs. Shouse and those that she had the wisdom to gather around her to help.

Now, we are at a crossroads where a refinancing is necessary. I have put in this bill, and I am privileged to say it is co-sponsored by the chairman and the ranking member of this distinguished committee on which I was privileged to serve with the current chairman of this subcommittee, and it is just primarily a means to start the dialogue between the Congress of the United States and minds far better than mine to try and figure out a means by which to provide a refinancing.

Many years ago, when I was in the private practice of law, I was representing banks and worked actively in certain refinancing of the Kennedy Center. As such, having been on the ground floor of that magnificent institution for these many years, I have watched the various iterations of the refinancing that has gone on between the Congress and that distinguished group. I think there is a parallel here in goals for us to try to keep this institution alive and well. Therefore, the bill is for the purpose of opening up the negotiations.

I would like to submit a statement later to amplify my remarks, but I appreciate the courtesy of the chair given to me.

[The prepared statement of Senator Warner follows:]

JOHN WARNER
VIRGINIA

COMMITTEES:
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FEBRUARY 21, 1990

STATEMENT OF

SENATOR JOHN WARNER

CONCERNING S.1859

BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

SUBCOMMITTEE ON PUBLIC LANDS

Mr. Chairman, today the Subcommittee on Public Lands has before it S.1859, a bill I introduced at the end of the last session of Congress that is designed to assist a national treasure located in the Commonwealth of Virginia -- Wolf Trap Farm Park. Unfortunately, through a series of misfortunes, Wolf Trap now finds itself unable to repay debts owed to the United States. The legislation I introduce today would address Wolf Trap's problem.

Mr. Chairman, I would like to recount for members of the Subcommittee the history of Wolf Trap Farm Park's creation and the source of its financial difficulties. In 1966, Mrs. Catherine Filene Shouse donated approximately 100 acres of her northern Virginia farmland and provided $1.7 million to the U.S. Government for the construction of an original outdoor amphitheater and related structures. These gifts, accepted by the 89th Congress (P.L. 89-671), created America's only national park dedicated to the performing arts, Wolf Trap Farm Park.

Under the terms of a cooperative agreement, the Wolf Trap Foundation (a private 501(C)(3) Foundation) provided the programming, fundraising, marketing, and related education programs for 10 successful years in partnership with the National Park Service. The Foundation's educational programs have expanded nationally, reaching substantial numbers of pre-school children through the arts.

In April 1982, the Filene Center, Wolf Trap's outdoor amphitheater, burned to the ground. The exact cause was never determined. At the time, like all government buildings, the Center was self-insured by the U.S. government.

Mindful of the lengthy process normally associated with the rebuilding of a government facility, the Foundation worked closely with the Administration and Congress to reach an agreement, which was codified in P.L. 97-310, to share equally in the reconstruction effort. At the time, the cost of reconstructing the facility was estimated to be $18 million.

During the reconstruction effort, representatives from the National Park Service and the Foundation approved necessary change orders for structural enhancements, safety and fire protection that escalated the original estimated cost to $26.4 million. Monies raised by the Foundation, totaling almost $7.4 million, which were to be used to retire the debt, were channeled into the reconstruction effort.

In January 1985, near the end of the reconstruction, a main girder fractured. To repair the fractured girder, the Foundation raised an additional $4 million in advances from contractors, an insurance carrier, and additional borrowing from the National Park Service, as well as $.7 million contributed by the Foundation. The Foundation instituted litigation against the contractor, subsequently receiving a partial settlement on advanced monies.

Reconstruction and repair of the Filene Center has spanned approximately 5 years. During that time the Foundation has consumed significant time, energy and resources to assist in providing construction and repair administration for a government facility.

The Filene Center has reopened and is once again providing high quality programs and a truly unique "park" experience for hundreds of thousands of visitors.

Mr. Chairman, at this point three facts are clear:

-- For a variety of reasons, rebuilding the facility cost more than the original estimates;

-- The Wolf Trap Foundation raised almost $7.5 million of private funds which has of necessity been used to rebuild the facility instead of for payment of its debt to the U.S. government; and

-- The U.S. government and the American people have a first class and truly unique facility for the performing arts.

Mr. Chairman, S.1859 acknowledges the significant contribution that the Wolf Trap Foundation has made to the public and acknowledges the unforeseen difficulties it has encountered by restructuring the debt obligation to the United States government in a manner that contributes to its education programs which serve the public interest throughout the Nation.

Mr. Chairman, the legislation before this Subcommittee waives repayment obligations for one-half of the total amount owed by the Foundation in principal and interest as of the date of enactment of this Act and stops the running of interest upon the date of enactment of this act. In addition, the legislation provides that the remaining obligations shall be repaid in ten years with cash, property or credits -- including credits for the continuing educational programs for the Wolf Trap Opera Company, Wolf Trap Institutes for Early Learning Through the Arts, and the programs and activities of the Education Division.

Mr. Chairman, I thank you and other members of the Committee for scheduling hearings on this legislation so promptly, and I urge you to act on it favorably.

Thank you, Mr. Chairman.

Senator BRADLEY. Let me thank you, Senator Warner, for your testimony. Certainly on this issue and on many issues, but certainly on this issue, your experience and commitment is understood and appreciated by the committee, and it will play a big role in the deliberations.

Senator WARNER. I thank you, Mr. Chairman.

Senator BRADLEY. Ms. Harriman, if you could give your testimony or give us your views on S. 1360 and S. 1859, I would appreciate that.

Senator WARNER. I would like to wait for a moment, if she could address the bill.

Ms. HARRIMAN. I will do S. 1859, I have a brief summary. I would like to submit my full statement for the record.

Senator BRADLEY. Your full statement will be submitted for the record, as Senator Warner's will be.

STATEMENT OF CONSTANCE B. HARRIMAN, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, ON S. 1859, ACCOMPANIED BY ROBERT STANTON, REGIONAL DIRECTOR, NATIONAL CAPITAL REGION, NATIONAL PARK SERVICE

Ms. HARRIMAN. S. 1859 would restructure loan repayment terms for the Wolf Trap Foundation for the Performing Arts. In 1966 Congress created America's only national park dedicated to the performing arts, Wolf Trap Farm Park.

In that year Mrs. Catherine Shouse donated to the Federal Government 100 acres of land and approximately $2 million for the construction of the original performing arts center. The Department of the Interior and the National Park Service have had a successful partnership with the Wolf Trap Foundation since the inception of the park.

It is my responsibility to ensure that this relationship and the high quality of performance at Wolf Trap continue. We are all aware of the unfortunate circumstances regarding the destruction of the Filene Center in 1982. We are also well aware of the cracked beam problem after the reconstruction of the center in 1985.

A number of parties, the Executive Branch, the Legislative Branch and private groups have all contributed to the rebuilding of the center by grants, by government loans and by private funds. The Foundation presently owes the Federal Government approximately $16 million. This breaks down to approximately $8.5 million in principal and $7.5 million in interest.

The Foundation's loans were due to be repaid to the Federal Government in November 1988. No payments have been made. Mr. Chairman, this is a problem that must be resolved. We appreciate the contributions that the Foundation has made in support of the performing arts. However, there is an outstanding debt due the Federal Government. We all seem to agree that the loan must be restructured.

We look forward to working with Congress and the Foundation to fashion a restructuring of the terms of the loan—a restructuring that reasonably and equitably satisfies the interest of all the parties involved.

Thank you.
[The prepared statement of Mr. Stanton on S. 1859 follows:]

STATEMENT OF ROBERT STANTON, REGIONAL DIRECTOR, NATIONAL CAPITAL REGION, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ON S. 1859, A BILL TO RESTRUCTURE REPAYMENT TERMS FOR LOANS TO THE WOLF TRAP FOUNDATION FOR THE PERFORMING ARTS.

February 21, 1990

Mr. Chairman, I appreciate the opportunity to provide your subcommittee with the views of the Department of the Interior on this legislation.

The Administration recognizes the difficulties faced by the Wolf Trap Foundation for the Performing Arts in meeting its financial obligations to the Federal Government. We are willing to work cooperatively with Congress to agree on a reasonable and appropriate rescheduling of the Foundation's loan repayments that will not put an undue burden on ongoing programs at Wolf Trap and that is fair to all affected parties.

The National Park Service has worked closely with Mrs. Catherine Shouse and the Wolf Trap Foundation since Congress created, through P.L. 89-871, America's only National Park dedicated to the Performing Arts, Wolf Trap Park.

To create this Park, the Wolf Trap Foundation donated to the Federal Government 100 acres of land and $2 million dollars for construction of the original performing arts center. Under the terms of a cooperative agreement, the Wolf Trap Foundation has

provided the programming, fundraising, marketing and related educational programs for 10 successful years in partnership with the National Park Service/Department of the Interior. For its part, the National Park Service pays certain operating costs at Wolf Trap Park. Federal funding for this purpose now exceeds $2 million annually.

In April 1982 the outdoor amphitheater, the Filene Center, burned to the ground. The exact cause was never determined. The structure, like all buildings owned by the Federal Government, was self-insured by the government.

To avoid the lengthy process normally associated with rebuilding a government facility, the Foundation worked closely with the Administration and Congress to reach an agreement in Public Law 97-310 to share in the reconstruction effort, estimated to be $17 million. The law authorized a direct Federal grant to the Foundation of $9 million, and a Federal loan to the Foundation of $8 million.

During the reconstruction, change orders were approved by the National Park Service and the Foundation for structural enhancements, safety requirements, and fire protection that escalated the original estimate to a construction cost total of $21.6 million. The Foundation applied $4.6 million of their donated funds to the additional construction costs. The Filene Center reopened July, 1984.

3

In January 1985, a main girder fractured. The Federal Government responded quickly by providing additional loan authority of $1.5 million. In accordance with appropriation language, the National Park Service reprogrammed $1.5 million from funds appropriated for its construction projects, anticipating full repayment of the loan. The Foundation instituted litigation against the contractor, and subsequently received settlement. As a result of this settlement, the Federal Government received $1.1 million in June, 1988. The balance due on this loan is approximately $400,000, without interest added.

The Foundation raised a total of $7,211,000 for reconstructing the Filene Center. None of this amount was applied to repaying loans from the Federal Government. As I have noted, $4.6 million was used to pay cost overruns. The remaining $2.6 million was used for fundraising costs, legal fees, and temporary facilities. The Foundation also donated in-kind construction contract administration services that it estimated were worth $2,164,000.

The Foundation's loans were due to be repaid to the Federal Government in November, 1988. Payments have never been made. At present, the Foundation owes the Federal Government a total of approximately $16 million, including principal and interest. The interest is accumulating on this debt at approximately $1.8 million per year. The Department enclosed a bill of collection

from the National Park Service in November 1988 in the amount of $14,231,295.75.

In 1988, the General Accounting Office (GAO) analyzed the Foundation's debt. The GAO concluded it was unlikely the Foundation would be able to repay its outstanding debt and accrued interest when due on November 23, 1988. However, the GAO noted that "the Foundation is not entirely without resources," citing positive net operating income and valuable real property assets. The GAO report "did not consider any operational or management changes which might be made to increase (the) profitability" of Foundation operations, but nevertheless found that "if the Foundation's real property were used to reduce its outstanding debt, any remaining debt could be restructured to be repaid over a reasonable period of time." (GAO Report AFMD-88-54FS, PP. 1,2,4.)

Section (a) of S. 1859 would drop repayment obligation for one-half of the Foundation's $16 million obligation. Section (b) provides that no additional interest will accrue on the loan, beginning with the date of enactment. Section (c) provides the remaining $8 million may be repaid with cash, or property, or credits , to be jointly determined by the Foundation and the Secretary. Repayment credit may be derived from the Foundation's educational programs associated with the Wolf Trap Opera Company, the Wolf Trap Insititute for Early Learning through the Arts, and the programs and activities of the Education Division. Section

5

(c) further requires all obligations be repaid within 10 years of the date of enactment

Mr. Chairman, although Congress may ultimately choose to bestow the debt relief contemplated by S. 1859, it is within the Foundation's means to meet a larger proportion of its obligations. We are concerned about the bill's provision allowing the Foundation to pay its debts with credits. This would create a precedent which would eliminate incentives to operate programs in the most efficient and cost effective manner.

The National Park Service and the Wolf Trap Foundation have worked closely through the years in establishing, constructing and operating an outstanding and professional National Park for the Performing Arts. It is certainly our intention to preserve the same high level of professionalism and programming for future generations. We look forward to working with Congress to fashion a rescheduling of the Foundation's loan payments that reasonably and equitably protects the interests of all parties.

In conclusion, the Administration has no objection to restructuring the terms and agreements for the loans, but would want to do so in a way that ensures a full repayment over a reasonable timeframe.

This concludes my prepared remarks, Mr. Chairman.

Senator BRADLEY. Do you have comments on S. 1360?
Ms. HARRIMAN. Yes, I do. Comments on S. 1360 and H.R. 2844.

STATEMENT OF CONSTANCE B. HARRIMAN, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, ON S. 1360 AND H.R. 2844

Ms. HARRIMAN. We strongly support enactment of either bill if amended as suggested in this statement. The bills are identical in substance; they differ only in their titles and in minor stylistic or typographical detail. The bills would authorize the Attorney General to sue for response costs and damages to marine resources or aquatic resources within the National Park System.

Amounts recovered in such actions would be available without appropriation to the Secretary of the Interior to finance response costs and damage assessments; to restore, replace or acquire the equivalent of the damaged resources; and to manage and improve the unit of the National Park System where the damaged resources are located.

The bills further direct the Attorney General to seek equitable relief, to abate an imminent risk of destruction or injury to such marine or aquatic resources or to restore or replace resources actually injured.

Finally, the bills would authorize the Secretary to accept donations of money or services to meet response costs and to expend such money without further congressional action.

Mr. Chairman, there are 23 units of the National Park System that have marine resources within their borders. Six additional units, including Voyageurs National Park in Minnesota, are located on the Great Lakes and contain aquatic resources that would fit the definition of National Park System resource protected under the bills.

The effect of the bills would be to extend to these 29 units of the National Park System the same relief for damage to marine and aquatic resources as is now available in existing law for national marine sanctuaries designated by the Secretary of Commerce.

The Marine Protection Research and Sanctuaries Act of 1972 was amended in the last Congress to provide the same or similar liability and recovery provisions for marine sanctuaries as S. 1360 and H.R. 2844 would extend to the National Park System. We believe it is appropriate to treat damage to parks and marine sanctuaries the same, in terms of the ability of the resource manager to prevent damage and to use amounts recovered from the party found liable to repair or replace damaged resources.

The need for this legislation is highlighted by two fairly recent events. The first occurred in December 1986, when a freighter ran aground on a living coral reef in Biscayne National Park, Florida. The freighter damaged about 6,000 square feet of reef. The Department of Justice sued for damages and the vessel's owner settled out of court in the amount of $40,000. This money was deposited in the General Fund of the U.S. Treasury and was unavailable to the National Park Service for repair of the damaged reef.

The second incident occurred October 30, 1989, also in Florida. In this case, a freighter loaded with phosphate fertilizer ran aground

on a living coral reef within Fort Jefferson National Monument in the Dry Tortugas. Damage to the reef was extensive. About three acres were bulldozed by the freighter's hull. The Department of Justice filed suit on November 3, 1989, seeking several million dollars in damages. The ship's corporate owner posted a bond of $3.1 million and the case is proceeding.

The State of Florida has intervened on the basis that the damaged reef may be State property within the three-mile limit. If the bond is forfeited or if an award is granted, the money must be deposited in the General Fund of the U.S. Treasury.

Mr. Chairman, living coral is fragile and must be repaired soon after damage occurs. Unfortunately, no funds were available for repairs to the reef at Biscayne in 1987 and the coral died. It is uncertain whether funds are available to repair the recent damage at Fort Jefferson.

Under the provisions of the pending bills, however, fines or judgments paid by the party which caused the damage would be available for repairs.

Section 1(e) would provide 20 percent of the recovered amounts to finance response costs and damage assessments. The remaining amounts would be used in order of priority to restore, replace or acquire park resources, and to manage and improve the park system unit. We are concerned with this distribution of funds.

First, it is possible the damage assessment and response costs could exceed 20 percent of funds recovered. Second, it would be inappropriate to make any part of the balance of funds available for day-to-day park operations since such funding would be outside the normal appropriations process. Therefore, we recommend that funds recovered from liable parties be used to address any and all damage assessment, response and restoration costs or acquisition costs for replacement purposes associated with the injury to the marine resource. Any remaining amounts should be deposited in the General Fund of the U.S. Treasury, rather than to fund additional park improvements. These needs should be addressed through the regular appropriations process.

Also, Mr. Chairman, S. 1360 and H.R. 2844 would appear to include oil spills which cause resource damage. As a technical matter, this legislation should be amended to assure that it does not cover claims or liabilities arising under section 311 of the Clean Water Act and the Comprehensive Environmental Response Compensation and Liability Act.

In designating units of the National Park System, the Congress recognizes there are special qualities over and above other resources. These special places warrant special care. It is fitting, therefore, that S. 1360 and H.R. 2844 would extend the existing damage recovery process for marine sanctuaries to marine resources of the National Park System.

Thank you.

[The prepared statement of Ms. Harriman on S. 1360 and H.R. 2844 follows:]

STATEMENT OF CONSTANCE B. HARRIMAN, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING S.1360 AND H.R. 2844, SIMILAR BILLS TO PROTECT MARINE RESOURCES IN THE NATIONAL PARK SYSTEM.

February 21, 1990

Mr. Chairman, I appreciate the opportunity to provide your Committee with the views of the Department of the Interior on this legislation.

We strongly support the enactment of either bill, if amended as suggested in this statement.

The bills differ only in their titles and in minor stylistic or typographical detail; they are identical in substance. The bills would authorize the Attorney General to sue for response costs and damages to marine resources or aquatic resources within the National Park System. Amounts recovered in such actions would be available, without appropriation, to the Secretary of the Interior to finance response costs and damage assessments, to restore, replace, or acquire the equivalent of the damaged resources, and to manage and improve the unit of the National Park System where the damaged resources are located.

The bills further direct the Attorney General to seek equitable relief to abate an imminent risk of destruction or injury to such marine or aquatic resources or to restore or replace resources actually injured.

Finally, the bills would authorize the Secretary to accept donations of money or services to meet response costs, and to expend such money without further congressional action.

Mr. Chairman, there are 23 units of the National Park System that have marine resources within their boundaries. Six additional units, including Voyageurs National Park in Minnesota, are located on the Great Lakes and contain aquatic resources that would fit the definition of "Park System Resource" which would be protected under the bills.

The effect of the bills would be to extend to these 29 units of the National Park System the same relief for damage to marine resources as is now available in existing law for National Marine Sanctuaries designated by the Secretary of Commerce. The Marine Protection, Research, and Sanctuaries Act of 1972 was amended in the last Congress (P.L. 100-627) to provide the same or similar liability and recovery provisions for Marine Sanctuaries as S.1360 and H.R. 2844 would extend to the National Park System. We believe it is appropriate to treat damage to parks and marine sanctuaries the same, in terms of the ability of the resource manager to prevent damage and to use amounts recovered from the party found liable to repair or replace damaged resources.

The need for this legislation is highlighted by two fairly recent events: The first occurred in December 1986 when a freighter ran aground on a living coral reef in Biscayne National Park, Florida. The freighter damaged about 6,000 square feet of reef. The Department of Justice sued for damages, and the vessel's owner settled out of court in the amount of $40,000. This money was deposited in the general fund of the Treasury and was unavailable to the National Park Service for repair of the damaged reef.

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to repair the recent damage at Fort Jefferson. Under the provisions of the pending bills, however, fines or judgements paid by the party which caused the damage would be available for repairs.

Section 1(e) would provide 20 percent of the recovered amounts to finance response costs and damage assessments. The remaining amounts would be used in order of priority to (a) restore, replace or acquire park resources and (b) to manage and improve the park system unit. We are concerned with this distribution of funds. First, it is possible that damage assessment and response costs could exceed 20 percent of funds recovered; second, it would be inappropriate to make any part of the balance of funds available for day-to-day park operations, since such funding would be outside the normal appropriations process. Therefore, we recommend that funds recovered from liable parties be used to address any and all damage assessment, response and restoration costs or acquisition costs for replacement purposes associated with the injury to the marine resource. Any remaining amounts should be deposited in the General Fund of the Treasury, rather than to fund additional park improvements. These needs should be addressed through the regular appropriations process.

Also, Mr. Chairman, S.1360 and H.R. 2844 would appear to include oil spills which cause resource damage. As a technical matter, this legislation should be amended to assure that it does not cover claims or liabilities arising under section 311 of the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act.

Mr. Chairman, in designating units of the National Park System, the Congress recognizes their special qualities over and above other resources. These special places warrant special care. It is fitting, therefore, that S.1360 and H.R. 2844 would extend the existing damage recovery process for marine sanctuaries to marine resources of the National Park System.

This concludes my prepared remarks, Mr. Chairman. I would be pleased to respond to any questions you may have.

Senator BRADLEY. Thank you very much, Ms. Harriman.

In your testimony, you mentioned that the legislation should be amended to avoid conflicts between the Clean Water Act and CERCLA. Are park marine resources in places like Buck Reef or Biscayne, are they adequately protected by those acts now, do you think?

Ms. HARRIMAN. Offhand, that is something I could not really say. I would be happy to provide you an answer for the record.

Senator BRADLEY. Do you know if either act provides for channeling of recovered sums directly into the affected park, either one of the Clean Water or the CERCLA?

Ms. HARRIMAN. I am unfamiliar with that.

Senator BRADLEY. Okay. Does your assistant know?

Mr. STANTON. No. I am here in the context of Wolf Trap, Mr. Chairman.

Ms. HARRIMAN. I might ask if James Saunders is here? Jim Saunders is the superintendent of Biscayne National Park, Florida. Perhaps he has some views.

Mr. SAUNDERS. Good afternoon, Senator.

Senator BRADLEY. Good afternoon. Welcome to the committee.

Mr. SAUNDERS. As I am aware, the U.S. Coast Guard administers the oil spill recovery funds, and to my knowledge, any agency that has the damage is reimbursed for those costs that they incur.

Senator BRADLEY. So, there is provision in an oil spill?

Mr. SAUNDERS. Yes.

Senator BRADLEY. In Clean Water?

Mr. SAUNDERS. Of that I am not sure.

Senator BRADLEY. So, basically the administration's view is support on S. 1360?

Ms. HARRIMAN. Yes.

Senator BRADLEY. And support on S. 1859?

Ms. HARRIMAN. Our feeling on S. 1859, Mr. Chairman, is that at this point we feel the Federal Government should be repaid the full amount of the loan, but we would very much like to work with the Foundation and Congress to try to work on restructuring that loan.

Senator BRADLEY. Okay. I notice that the debt is, what about $16 million now?

Mr. STANTON. That is correct.

Senator BRADLEY. And interest is accruing at about $2 million a year?

Mr. STANTON. That is correct.

Senator BRADLEY. You say you want to work on restructuring, do you have any ideas?

Mr. STANTON. First, Mr. Chairman, I would certainly want to attest to the comment made by Secretary Harriman that the relationship between the National Park Service and the Wolf Trap Foundation is a fine example of public, private sector involvement relative to carrying out the mission of Wolf Trap Farm Park for the Performing Arts.

The matter of the loan—obviously, there are many approaches in terms of restructuring. What we would suggest as a concept, Mr. Chairman, is that your committee would direct or otherwise authorize the Department of the Interior to work cooperatively with,

perhaps, the Secretary of the Treasury, the leadership of the Wolf Trap Foundation and others, perhaps the Director of OMB, to fashion a number of options that would restructure the loan but, by the same token, would assure the continued viability of Wolf Trap Park for the Performing Arts, so there would not be an impact on the level of services provided to the public.

Senator BRADLEY. When you say restructure, are you thinking stretching the loan out, lower interest rates?

Mr. STANTON. That obviously would be an option, as the bill suggests. There would perhaps be services that could be acceptable in lieu of cash payments. There are a number of ways it could be addressed, but ultimately, it would have to be endorsed by Congress.

Again, as the Secretary pointed out, we are obligated by law and by administrative edict to proceed with attempting to collect the loan.

Senator BRADLEY. What do you think is going to happen if the legislation is not enacted?

Mr. STANTON. If the legislation is not enacted, Mr. Chairman, we are obligated to continue to seek payment of the loan to the government. There is a Debt Collection Act that we are obligated, administratively, to follow.

Senator BRADLEY. So, you basically would go after them.

Mr. STANTON. We would attempt to collect, yes, sir.

Senator BRADLEY. Okay. Well, one for three from the Interior Department today. You support one and oppose two in their present form. Let me thank you very much for your testimony and your comments will help the Committee in its deliberations.

The next witness will be Mr. Steven Whitney, who is the Director, National Parks Program of the Wilderness Society.

Why do we not have Bill Lienesch of the National Parks and Conservation Association come up and J. Jackson Walter, the National Trust for Historic Preservation and Jack Sobel. And let us save John Camp. Let us keep Jack Sobel. Let us do the panel on 844, Whitney, Lienesch and Walter, and then we will have Mr. Sobel and then Mr. Camp.

Welcome to the subcommittee. Please try to keep your comments to five minutes, and let us begin with Mr. Whitney.

STATEMENT OF STEVEN C. WHITNEY, DIRECTOR, NATIONAL PARKS PROGRAM, THE WILDERNESS SOCIETY

Mr. WHITNEY. Thank you Mr. Chairman. I do have some comments.

Senator BRADLEY. Your full statements will be in the record.

Mr. WHITNEY. I had comments both on H.R. 844 and S. 1360. Would you like me to go ahead and make my remarks on both at this time?

Senator BRADLEY. That would be appropriate.

Mr. WHITNEY. On S. 844, we believe that Senate confirmation of the director is both necessary and appropriate. We support a five-year term for the director, and we believe three deputy directors, as required in the bill, would provide necessary balance in the directorate among traditional natural area programs and the cultural and recreation programs.

We also support the review board. We are sure Congress and the White House receive that kind of information you need to do your good work.

But most of all, what we support are provisions intended to give the NPS some additional political autonomy within the Department of Interior.

The past 10 years have been dark days for the park service. Departmental appointees set really new standards for political interference and NPS resource decision making. From the wilds of Alaska to the Everglades, political functionaries attempted to substitute politically motivated decisions for the professional analysis and considered judgment of NPS resource personnel.

I think this was, perhaps, most clearly illustrated two years ago in an issue at the Big Cypress National Preserve in South Florida. In that instance, a private oil and gas company requested approval from the Park Service to do some seismic testing, 85 miles of seismic testing in the preserve, consisting of over 10,000 dynamite shots. This was an undertaking really unprecedented in the park system.

The NPS drafted an environmental assessment on the proposal. We reviewed it, found it totally inadequate, not in compliance with the National Environmental Policy Act and inconsistent with the park services own regulations in 36 CFR9(B). The National Park Service professionals at the field level and in the regional office agreed with our position, frankly, that a full EIS was appropriate and should be conducted on the proposal, and that the finding of no significant impact would be really inappropriate.

However, then Assistant Secretary Horn, an attorney, rejected the professional judgment of trained resource managers and ordered the park service to authorize the seismic work to proceed. Work commenced almost immediately. It was about the third week in April.

As a result, with the assistance of our legal counsels, called Legal Defense Fund, the Wilderness Society, joined by NPCA, Audubon and others filed suit in the U.S. District Court in Florida. The hearing on our request for injunction was called off in the 11th hour, literally the day before the hearing on injunction. When the Department of the Interior, understanding they were going to lose, rescinded the earlier approval and agreed to halt the seismic work, pending additional environmental analysis. That work is yet to be started again.

Attached to my testimony, Mr. Chairman, is a copy of a memorandum from Regional Director, Bob Baker to then Director of the Park Service, Bill Mott. It very carefully documents this political meddling, and I hope you will find that of interest.

We think it is time the American people put a stop to this sort of political meddling and that an assistant secretary ought not continue to have the opportunity to circumvent NPS resource decision making. We do not question the fact that there is a fresh breeze blowing in the Department and that the iron curtain between the director's wing and the assistant secretary's wing, apparently, has been dismantled.

But, notwithstanding the change in circumstance down there, the damage really done to the morale and the resources of the park

system over the last eight years prior to President Bush bringing in his people was so severe that we are happy to support your bill today.

As to the Marine Damage bill, S. 1360, we would like to express our general support for that measure. While we support it, we do have several concerns we would like to raise.

First, we note that liability is waived in Section 1(b)(3) for any activity that "is authorized by Federal or State law." We understand why that was included, but we feel some clarification may be in order, perhaps in a report, committee report, because nearly any major marine activity that would be subject to some sort of approval or authorization. And clearly the intent of the language of the bill was not to automatically shield any person that is operating in the marine environment from any liability if they have some sort of State or Federal permit for that activity. So we would like to express some concern about that.

Secondly, the legislation makes really no provision for those instances when a person is unable to pay a court-ordered settlement. Some of these ships are operating, and they are basically owned by a file cabinet in, you know, Liberia someplace.

We are concerned about that, and we think the Congress may wish to consider the establishment of a national fund for marine park damage mitigation. This fund could by financed by requiring a supplemental levy on guilty parties equal to 10 percent of any damage payment awarded pursuant to this act. The fund would be available for allocation at the discretion of the Director to any damaged park area where, under provisions of this act, either a monetary award was sought but not attained or an award attained was insufficient.

Thirdly, the bill limits to 20 percent of the total damage payment received the use of funds for immediate response cost and damage assessments. The balance of the payment is used for restoration, replacement, management and so on.

We question the limitation for, in some circumstances, such as a toxic material spill, the only real opportunity for mitigation might be in the immediate response, because not cleaned up in 24 hours, you know, at that point it is in the water column or in the substrate and it is difficult to retrieve at that point.

We think it would be useful for this legislation to create an incentive, really, for superintendents to put all possible resources at a problem like that when it comes up, and we fear that limiting a damage payment to cover costs only to the amount of 20 percent of those immediate response may create the kind of disincentive for that kind of activity.

So we are concerned about it. We do not really understand why that 20 percent limitation was included. Perhaps one of the later witnesses can clarify, because I understand some of that language is similar to that in the Marine Sanctuaries legislation under another act.

Finally, in our written statement, we do express some concern about the need for direction to the Secretary of the Interior about how to measure damages to natural resources. Upon further review of the bill, particularly the construction of the bill in relation to the definition of damages, which is quite good, I think our concern

was slightly overstated in our written testimony, so I ask you to consider that review in regard to our statement. Thank you.

[The prepared statement of Mr. Whitney follows:]

THE WILDERNESS SOCIETY

TESTIMONY OF STEVEN C. WHITNEY, THE WILDERNESS SOCIETY, ON THE BILLS S. 844 AND S. 1360, BEFORE THE UNITED STATES SENATE, SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, COMMITTEE ON ENERGY AND NATURAL RESOURCES, FEBRUARY 21, 1990.

Mr. Chairman, members of the Committee, my name is Steven C. Whitney, and I serve as Director of The Wilderness Society's National Parks Program. The Wilderness Society is a private, non-profit membership organization, dedicated to the protection and sustainable management of this nation's public land resources. On behalf of our 350,000 members, I appreciate this opportunity to testify before you today.

The National Park Service (NPS) has a fundamental obligation to protect, forever, the natural and cultural resources entrusted to its care by the Congress. The National Park Service is also required to provide for visitor enjoyment, appreciation and understanding of those resources. These obligations are embodied within the Act of August 25, 1916, the National Park Service Organic Act which reads in part:

> The purpose of the National Park Service ". . . is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

The Congress established this challenging mandate but the National Park Service is unable to meet it. To do so, the National Park Service must be given the tools required to do the job, and the authority to aggressively use those tools. Unfortunately, for the past decade, the Service's hands were tied. Land acquisition activities were constrained, interpretative programs were run on a shoestring or not at all, natural and cultural resource preservation needs went unaddressed, the scientific research program floundered, external threats grew more severe, and most importantly, the professional judgments of NPS resource managers were modified and reversed by political appointees. The effect on park resources and on the morale of the professionals in the Service was dramatic and continues today.

It is our view that the NPS must control the land set aside by the Congress, know what resources they are protecting, have an effective program to ensure resource integrity over the long term, and have a first-class program for interpreting the Nation's natural and historic heritage to the public. These are basic requirements for compliance with the 1916 Act. When enacted, the two pieces of legislation before you today will improve the ability of the Service to meet those requirements. For that reason, we support them both.

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SENATE BILL 844

Provisions of S. 844 require Senate confirmation of the Director of the National Park Service and establish a five-year term of office, require appointment of three Deputy Directors, establish a well-staffed National Park System Review Board, and insulate the National Park Service from the harmful effects of political manipulation.

We believe that Senate confirmation of the Director is necessary and appropriate. We support a five-year term for the Director, and we believe the three Deputy Directors will provide a necessary balance in the directorate among the traditional natural area programs, and the cultural and recreation programs. We also support the Review Board to assure the Congress and the White House receive objective and timely information and recommendations on matters relating to NPS operations and budget. Most of all, however, we support provisions of S. 844 intended to give the NPS more political autonomy in the Department of the Interior.

Mr. Chairman, during the past ten years, departmental appointees have set new standards for political interference in NPS resource decision-making. From the wilds of Alaska to the Everglades, political functionaries attempted to substitute politically motivated decisions for the professional analysis and considered judgement of NPS resource personnel. Perhaps this was most clearly illustrated two years ago in the dispute over oil and gas exploration in the Big Cypress National Preserve.

In that instance, a private oil and gas company requested approval from the National Park Service to conduct a total of 85 miles of seismic testing in the Preserve, an undertaking unprecedented in the National Park System. The NPS then drafted an environmental assessment on the proposal that we found to be wholly inadequate, not in compliance with requirements of the National Environmental Policy Act, and contrary to the Park Service's own regulations at 36 CFR 9(b).

National Park Service professionals at the field level and in the regional office agreed with our position that a full environmental impact statement should be conducted on the proposal and that a Finding of No Significant Impact (FONSI) would be inappropriate. However, then Assistant Secretary Horn, an attorney, rejected the professional judgement of trained resource managers and ordered the National Park Service to issue the FONSI and to authorize the seismic work to proceed. Work commenced almost immediately.

As a result, The Wilderness Society, joined by NPCA, Audubon, Sierra Club and others, filed suit in U.S. District Court in Florida. The hearing on our request for injunction was called off in the eleventh hour when the Department of the Interior rescinded their earlier approval and agreed to halt the seismic work while they conducted additional environmental analysis of the proposal.

Attached to my testimony is a copy of a memorandum from Regional Director Baker to the Director of the National Park Service clearly documenting this unfortunate political meddling. Unfortunately, it was not an isolated case:

- In 1988, after taking over for William Horn as Assistant Secretary, Susan Recce overruled Director Mott when he determined that four Regional Directors deserved the highest rating on their personnel evaluations and an appropriate monetary reward. She forced the Director to downgrade the recommendations and denied the bonuses.

- Ms. Recce was also in charge when the Park Service's wilderness recommendations for Alaska were downgraded. In accordance with ANILCA, the NPS found some 18.9 million acres suitable for wilderness designation, but under departmental pressure only recommended 6.4 million acres in their draft

documents. Then, shortly after Vern Wiggins came to town as Deputy Undersecretary for Alaska, these meager recommendations were further reduced to 4 million acres.

* In December 1988, after replacing Recce, Becky Norton Dunlop issued a directive that all promotions, transfers and travel, for GS-13 and above personnel throughout the National Park System required her prior approval. This meant a scientist at Yosemite that needed to attend a professional meeting in Denver, had to receive the approval of the Assistant Secretary. This is a ridiculous example of micro-management by a political appointee. Fortunately, it is no longer in effect.

* Assistant Secretary Dunlop also continued to champion the policies developed under the Reagan Administration well into 1989, even though President Bush called for a new emphasis on national park protection. Secretary Lujan seemed either disinterested, ill-informed or in agreement with Ms. Dunlop's policy agenda for the parks. Specifically, in her brief reign as Assistant Secretary, Ms. Dunlop:

- delayed approval of the Congaree Swamp Land Protection Plan, seriously undermining the NPS schedule for property acquisition during FY 89.

- delayed approval of the Land Protection Plan for Timucuan National Preserve where there were threatened properties, willing sellers, and $1 million dollars available for acquisition.

- rejected the revised NPS oil and gas regulations at 36 CFR 9(b) without adequate explanation of why she found them deficient.

- delayed the release of the Big Cypress National Preserve General Management Plan, even though it had been ready for release for two years.

- proposed converting the Superintendencies of Yellowstone, Yosemite, Gateway, Golden Gate and Grand Canyon from career service GM-15, to Senior Executive Service (SES) positions. SES positions are subject to 15-day notice for involuntary transfer out of the bureau. Almost without exception, career (non-SES) transfers stay within the bureau. SES personnel evaluations are reviewed by the Assistant Secretary, while career service superintendents are reviewed by the Regional Directors, or rarely, by the Director.

We believe the purpose of this proposal was to obtain more direct control over these superintendents through the personnel evaluation process, and to establish more SES positions in order to remove current regional directors from existing jobs. We understand approval had been received from OPM for Yellowstone and Yosemite, and that implementation of the change at these two parks was imminent when the proposal was withdrawn. I should note that it was withdrawn soon after a hearing in the House of Representatives on companion legislation to S. 844; a hearing that included much lively discussion of the SES proposal.

It is our view that the American people must never again allow an Assistant Secretary to circumvent NPS decision-making and place this Nation's natural and cultural resources in jeopardy for political gain. We believe S. 844 would serve to reduce the level of political interference in the professional affairs of the National Park Service, and would help to prevent situations such as those outlined above which have resulted in the degradation of the National Park System and the demoralization of NPS professionals. It is time to give management of the National Park System back to the agency created in 1916 for that purpose. We are happy to support S. 844.

SENATE BILL 1360

Mr. Chairman, I would also like to express The Wilderness Society's general support for the bill S. 1360. This legislation will enable the National Park Service to receive settlements for damages to submerged natural and cultural resources and to initiate mitigative measures more rapidly. At present, such court-ordered settlements for park resource damage are not directly available to the Service, and damage is often not mitigated.

While we support the measure, we do have several concerns. First, we note in Section 1(b)(3) that liability is waived for any person where damage was the result of ". . . an activity authorized by Federal or State law." We feel some clarification may be in order, for nearly any major marine activity is subject to some sort of State or Federal permit or authorization. Surely, ownership of such a permit or approval should not automatically shield a person from liability when their actions damage national park resources.

Secondly, we are concerned the legislation makes no provision for those instances when a person is unable to pay the court-ordered settlement. The Congress may wish to consider the establishment of a national fund for marine park damage mitigation. This fund could be financed by requiring a supplemental levy on guilty parties, equal to ten percent of any damage payments awarded pursuant to this legislation. The fund would be available for allocation, at the discretion of the Director of the National Park Service, to any damaged park area where, under provisions of this Act, 1) a monetary award was sought, but not obtained, or 2) an award obtained was insufficient.

Thirdly, the bill limits, to twenty percent of the total received, the use of funds for immediate response costs and damage assessments. The balance of the payment is to be used for restoration, replacement, management and improvement. We question this limitation, for in certain circumstances, such as a toxic materials spill, immediate response might be the only real opportunity for damage control and mitigation. Once the material has entered the water column and the sea-bed, only time will return the resource to natural conditions. In such an instance, a high percentage of the damage award might appropriately be allocated to immediate response costs. We believe it would be useful for this legislation to create an incentive for NPS managers to immediately respond to such an incident with all available resources. We fear the twenty percent limitation may have the opposite affect.

Finally, the bill does not provide clear direction to the Secretary regarding how monetary estimates are to be assessed for damages to natural and cultural resources. The bill does direct that damage payments are to be <u>utilized</u> ". . . to restore, replace, or acquire the equivalent of park system resources . . . and to manage and improve the National Park System unit of which such (damaged) park system resources are a part." Yet, the bill does not specify that the cost of these actions should be the <u>measure of damages</u>. We suggest that the Committee consider amending the bill to clarify that the Secretary is to consider these expenditure requirements when assessing damages and when seeking a remedy in United States district court.

Thank you.

United States Department of the Interior

NATIONAL PARK SERVICE
SOUTHEAST REGIONAL OFFICE
75 Spring Street, S.W.
Atlanta, Georgia 30303

IN REPLY REFER TO

SPECIAL

DEC 23 1987

Memorandum

To: Director, National Park Service, WASO

From: Regional Director, Southeast Region

Subject: Shell Oil Company's proposal for seismic exploration, Big Cypress National Preserve

I want you to know that Superintendent Fagergren and I appreciate your efforts to convince the Assistant Secretary that the National Park Service undertake an Environmental Impact Statement (EIS), on Shell Oil Company's proposal for seismic exploration in the Big Cypress National Preserve.

As we all agreed during our meeting on Thursday, December 3, it was the prudent professional judgment to undertake the EIS, to explore all implications of the 85 miles of seismic exploration. It is unfortunate that the Assistant Secretary's office did not concur with our position and instructed us to issue the Environmental Assessment.

What is troublesome about the situation is not only that the Park Service did not have the opportunity to explore all alternatives, i.e., hand held drilling, feasibility of wider spacing of the holes, etc., but that the decision to go with an environmental assessment, which was a political decision, appears to be the National Park Service's proposal. Certainly the political leadership has the right to override our professional judgments, but I believe there should be a clear record of that decision.

Senator BRADLEY. Thank you very much, Mr. Whitney.
Mr. Lienesch.

STATEMENT OF WILLIAM C. LIENESCH, DIRECTOR, FEDERAL ACTIVITIES, NATIONAL PARKS AND CONSERVATION ASSOCIATION

Mr. LIENESCH. Thank you, Mr. Chairman. My name is Bill Lienesch. I am Director of Federal Activities for the National Parks and Conservation Association.

If I could, I would like to begin by just taking a little bit of an overview about the legislation before us today, the bills S. 844 and H.R. 1484. I was struck by your opening comments, Mr. Chairman, I had never thought of phrasing the bill in terms of the politics of compromise and what is wrong with that, but that really frames the bill correctly.

In 1916, when the National Park System was created and the National Park Service was created, Congress ordered that those resources be left unimpaired for the enjoyment of future generations. And through the politics of compromise we have seen impairment. Mr. Whitney talked about some of the recent examples. He had more in his testimony which he did not go through. I will go through a couple myself.

But I think that really frames the issue. And we are not trying to say that the Park Service should be taken out of politics. What we are saying is that the negative effects and the examples in our various testimonies point to those that have been paramount, certainly in the last eight years, but have been cyclic over time. It is the negative effects that we want to reduce and that this legislation is intended to do and is designed to do.

Just briefly, to talk about a couple of the examples. Certainly, the treatment of the Deputy Director, Dennis Galvin, of the Western Regional Director, Mr. Howard Chapman, in the previous administration, where in Mr. Galvin's case he was, some would say, sent into Siberia up in Harper's Ferry for a while after being removed from office. And Mr. Chapman's personnel ratings were changed back and forth in order, basically, in our view at least, to try and get even with him for trying to uphold what he believed was the law with regard to certain Park System units.

Ms. Harriman made the comment that a lot of the problems have been addressed and she mentioned three specifically. And we would agree that she has addressed those problems. But the real question is why were those policies in place in the first place? Why did travel have to be approved by the Assistant Secretary's office? Why did contact with Congress, congressional offices, have to be notified every time that occurred and so on and so forth.

I think by pointing out that she has corrected certain problems she points out the need for this legislation because these were not one-time examples, as I have said. They have happened over time and my testimony points to an example back in the 1950s when Schedule C appointees were introduced into the Park Service and the concern that brought forward at that point in time.

And if I could for a moment borrow the Director's muzzling example. There was muzzling under the previous administration, and I do not think anybody would disagree with that. And it is not that

we do not believe there should be a coach, but we believe that the Park Service Director should be coach, and that is what this is, again, designed to do. Not to make the Assistant Secretary or the Secretary or OMB or the policy office of the Department as the chief over the Park Service, but actually to make the Director that person.

In my testimony, also, Mr. Chairman, I point out a similarity, and we do not mean to draw a direct analogy, but to the Smithsonian. It has certain educational, preservation and conservation responsibilities, much like the Park Service does, but would any of us believe that the Smithsonian would be as effective as part of the General Services Administration or even as part of the Department of Education? No. I do not think any of us would come to that conclusion in much the same way.

The Park Service is really a preservation agency. It is not a multiple use agency, as are most of the agencies within the Department of Interior, and we would argue that it is really, in that sense, misplaced as part of that Department, and certainly would benefit by the legislation before us today.

In the testimony, also, Mr. Chairman, we point to the need for Congress and the public in general to get the benefit of Park Service professional advice. Not that we have to take that, but that we need to know what that is. All too often we remember and many of us used to joke about when Director Mott came before this committee, and when he would say, I am here to represent the views of the Department of Interior. That was a clear clue that he was not representing his own views, that he had a different viewpoint.

And that would usually come out, because in questioning Director Mott would often, honestly tell you what he thought. He was that kind of man. But not all people would be that way, and certainly other witnesses during the period were not that way.

In my testimony, Mr. Chairman, there are a number of points where we go through in agreement and show the need for the various points in the legislation. I know my time has expired, and I will not go through that. But I would just like to conclude by saying that we have argued as an organization for years and in a plan which we produced and publish two years ago, that the Park Service should really be an independent agency. This legislation certainly takes us in that direction, and we certainly totally support the legislation, but we would argue that we should even go one step further and make it totally independent.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Lienesch follows:]

70th NPCA

National Parks
and Conservation Association

STATEMENT OF WILLIAM C. LIENESCH
DIRECTOR OF FEDERAL ACTIVITIES
NATIONAL PARKS AND CONSERVATION ASSOCIATION

PRESENTED TO THE

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS
U.S. SENATE

FEBRUARY 21, 1990

The National Parks and Conservation Association appreciates the opportunity to testify on behalf of our 100,000 members nationwide. Mr. Chairman, we strongly endorse the legislation before you today. It is vital that the National Park Service be given the independence necessary to carry out its responsibility to preserve the national parks "unimpaired" for the benefit and enjoyment of future generations. Clearly, the key provisions incorporated in this legislation advances the long-term mission Congress envisioned for the National Park Service when that bureau was created in 1916.

One of America's unique contributions to the world is the concept of a "system" of national parks. The United States has been the world leader in the national parks movement. Nations around the world emulate our system. One of the primary reasons why we have been a leader is a result of the direction provided by Congress and key individuals in the National Park Service and elsewhere. Certainly, the 1916 enabling legislation was visionary in stating the value of parks to the American people. In protecting certain scenic wonders, preserving cherished landscapes and historic sites in perpetuity and providing for their enjoyment by the public consistent with that protection, Congress acted decisively in 1916, recognizing that ultimately the best way to provide for public enjoyment of the parks was to ensure the long-term preservation of our natural and cultural heritage was by creating the National Park System.

Since 1916, there have been other key pieces of legislation that have had a profound impact on the parks. Among them are enabling acts for key additions to the System as well general legislation that seeks to provide the highest level of federal protection to units of the national park system. Each of these acts has played an incremental role in establishing sound resource based boundaries and insuring that the parks are competently administered at the field level.

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Today, though, the integrity of our national parks are threatened by many factors, not the least of which has been the increasing politicization at the highest levels of government. Two years ago, when appearing before the House Subcommittee on National Parks and Public Lands, Robin Winks, Professor of History at Yale University and twice Chairman of the National Park System Advisory Board stated, "This threat to the park system is also a threat to democracy. As it develops, the combative party-oriented political process of the future could destroy the integrity of our park system."

There are several examples in recent years that point to the need to reduce the politicization that has occurred. The treatment of the former Deputy Director, Denis Galvin, is one such example. Another is the way in which the personnel ratings for Howard Chapman were manipulated by the Assistant Secretary's office because Mr. Chapman as the Western Regional Director would not follow orders that he believed not to be consistent with the law. In addition, under the previous Administration, there was hardly a vacant superintendency or National Park Service position filled at the GS-13 level or higher that was not approved first by the Assistant Secretary's office. Should candidates judged "highly qualified" by Civil Service standards be denied promotions because they were deemed "unsuitable" candidates for political reasons? The cumulative effect of such political meddling in personnel matters had a devastating impact on the morale of Park Service career professionals. As Professor Winks stated, "Just as no university worth its name would permit political interference, as no university faculty could allow itself to be politically manipulated, lest the educational function be contaminated by the momentary passions of political strife, so too must the national park system of the United States be above politics to the degree that this is possible."

The argument has been made that the situation under Secretary Lujan, Assistant Secretary Harriman, and Director Ridenour is vastly improved and that there is no longer any need for the legislation. We certainly would agree that there have been notable improvements but still believe that there is a great need for the legislation. The problems that were evident in recent years were not new. They have occurred in the past and will certainly again in the future. We believe that there are fundamental reasons discussed in more detail below that necessitate distancing the National Park Service from the Interior Department. We also believe that perhaps it is better to consider the changes called for in S. 844 and H.R. 1484 at a time when the problems are not paramount and the legislation can be reviewed systematically and not rushed through in response to immediate and dramatic problems.

Congress has entrusted the National Park Service with the unique responsibility of preserving our most treasured natural and cultural resources and providing for their enjoyment by the public. We believe that this responsibility is so important that it calls for the autonomy and unique status that would be provided by S. 844 and H.R. 1484. The National Park Service is misplaced as a bureau of the Department of the Interior whose major responsibilities include the utilization of natural resources. While there are no direct parallels elsewhere in the government, the Park Service is in some ways similar to the Smithsonian Institution which also has important conservation, preservation, and educational responsibilities. Obviously, the Smithsonian has a very unique history and a great deal of independence.

Would the Smithsonian be as successful as part of another agency such as the General Services Administration? We do not believe that it would be. Like the Smithsonian, greater independence would help assure that the Park Service's mission is achieved.

To care adequately for the long-term preservation of the resources entrusted to the care of the National Park System, the Director and other National Park Service officials must be as free as possible from political constraints and political interference. Concerns over politicization of the Service are not new, of course. One example from the 1950s is illustrative. In his book, Steve Mather of the National Parks, Robert Shankland describes the situation when high National Park Service officials were put under Schedule "C":

> The ultimate effect was to make these jobs political plums. Those familiar with the history of the National Park Service, with the immunity it had enjoyed from political appointments since its inception, were deeply concerned over the dangers implicit in this innovation, particularly since the threats that hang over the national parks and their scenic and historic features--threats of invasion by industry or other forces just as destructive of their primary values--never abate.

The real message of Mr. Shankland's point is that the resources protected by the National Park Service will always be faced with a variety of threats and that the Director and other National Park Service officials must be as unconstrained as possible in making decisions affecting the long-term preservation of those resources.

The Director of the National Park Service must carry out his or her responsibilities consistent with the direction provided by Congress as embodied in many pieces of legislation. Congress, of course, in enacting legislation, needs the benefit of the professional opinion and guidance of the Director and other National Park Service officials. It has been clear for some time that the Director of the National Park Service has not been free to provide Congress with professional recommendations. While this is not exclusively a recent situation, it certainly has been evident in recent years.

There have been many hearings when Senators and Representatives have questioned the Director or other Administration witnesses only to find out later that the professional opinion of National Park Service officials differed considerably, and sometimes almost completely, from the official Administration position. We all knew the meaning of former Director Mott's words when he appeared before Congress and stated in his opening lines, "Mr. Chairman, I am here today to present the views of the Department of the Interior." We have been fortunate that many Senators and Representatives have persisted in the search for professional opinions on a variety of issues. This Subcommittee has benefited from strong bipartisan leadership for many years. We do not believe, however, that obtaining professional advice should be contingent just on your diligence and that of other members of this Subcommittee. Rather, we believe that it should be readily forthcoming.

In some respects, the difficulty in obtaining professional advice is understandable. The Department of the Interior has many conflicting mandates. Some agencies in the Department have important resource development and extraction responsibilities. The National Park Service is charged with the preservation of our most important natural, cultural and recreational resources. It should not be surprising that the professional recommendations of park managers are changed and, too often, substantially altered if not reversed, as several layers of appointees in the Department review a position and put their stamp on it. Then, of course, the Office of Management and Budget has further opportunity to make substantial changes. Perhaps, we should be most surprised that Congress benefits from as much professional advice as it does.

While I have focused on the need for Congress to receive professional opinions, there is an equal need for the Administration and the public at large to receive this same benefit. In the many debates that occur over park resources and policy, it is necessary that others in the Administration benefit from the professional advice of the Director and other park managers without such advice being altered by various offices in the Department or the Office of Management and Budget. Similarly, the public can benefit from knowing the professional opinion of Park Service personnel. This legislation facilitates the gathering of diverse information and as a consequence better management decisions will result.

We are asked repeatedly to review Park Service proposals for park use and development. These proposals come in many forms including general management plans, environmental assessments and development concept plans. Many times, these proposals include notation of the Park Service's preferred alternative. It is important for the public to know that this preferred alternative really is the one chosen based on the best professional judgment, and not one chosen for its political expediency. That does not mean that the public, other departments in the Administration or Congress will necessarily accept this professional opinion. But it does mean that we can all benefit from knowing, as a base from which to make decisions, what the recommended action is in light of Park Service's best professional judgment.

There are many aspects of the proposed legislation that will help ensure the independence of the National Park Service and the independent judgment that will result ultimately, we believe, in a better and stronger National Park System. I would like to highlight just a few of these aspects.

We especially concur with the several provisions in Section 2 of S. 844 (Section 1 of the legislation as passed by the House) regarding the position of Director of the National Park Service. It is amazing that that the position of Director of NPS is not already subject to Senate confirmation. Bureau directors of many other federal agencies including "sister" agencies such as the U.S. Fish and Wildlife Service have had this requirement for some time. This is an extremely important requirement and one that has benefited the Fish and Wildlife Service.

Inextricably linked to the question of Senate confirmation are the professional criteria for the Director. From our perspective, confirmation and criteria must go together as a package. We would not want to see the confirmation provision enacted without professional criteria.

The legislation also calls for a five year term for the Director and states that the Director ". . . may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office." In this manner, the legislation provides the Director with the necessary job security so that he or she can feel free to offer a professional opinion even when it may not be politically expedient to do so.

Recent decades have seen the Director's job become literally a "revolving door" through which seven Directors have come and gone in the past 17 years often at the political whim of a particular Administration or when the Director has been perceived to have transgressed unacceptably in some action or decision. We would hope that the requirement of a term of office for the Director will serve to better establish the principle that the position of the Director is a professional one not subject to automatic change with the quadrennial change in Administration or for some political faux pas.

In considering this legislation, the House deleted those provisions dealing with a National Park System Review Board. We realize that there were concerns about such provisions in part because there was some fear that the Board might become another bureaucracy. While we believe that there are positive benefits of such a board, the legislation as passed by the House is an extremely important and valuable piece of legislation.

Under this legislation, Congress will still benefit from the advice of the Department of the Interior, the Office of Management and Budget, and other agencies and departments. This legislation does not lessen the ability of Congress to receive the important viewpoints of others in the Administration. It does, however, guarantee that it receive much better professional independent advice.

While we strongly endorse the legislation, Mr. Chairman, we urge that the Subcommittee consider going even further, by removing the National Park Service from the Department of the Interior and establishing it as an independent agency. We firmly believe that the National Park Service is sufficiently visible and prestigious in its own right, and sufficiently divergent in scope and purpose from the rest of the Interior Department to make such a move both desirable and necessary. Freedom from the Department would enable the Director and other professionals of the NPS to perform at even more impressive levels of public service, thus freed from the inherently conflicting values and purposes of the rest of the Department. Additional information on this point is included in our recently published report The National Park System Plan: A Blueprint for Tomorrow (volume 9 of this report addresses this issue in great detail).

We would also like to comment briefly on S. 1360 and H.R. 2844. This legislation is carefully designed to meet a very real problem and has our full support. As is clear from the accidents that have occurred in the past few years alone, there are obvious threats to marine resources in general and specifically to those protected as part of the National Park System. This legislation will definitely benefit park resources by providing, among other activities, funding to correct damage to marine resources in a much more expeditious fashion.

That concludes my testimony, Mr. Chairman. I will be happy to try to answer any questions you or other members of the Subcommittee may have.

Senator BRADLEY. Thank you very much, Mr. Lienesch.
Now let's hear from Mr. Walter.

STATEMENT OF J. JACKSON WALTER, PRESIDENT, NATIONAL TRUST FOR HISTORIC PRESERVATION

Mr. WALTER. Thank you, Mr. Chairman.

For the record, I am Jack Walter, President of the National Trust for Historic Preservation.

A couple of comments. First a word of thanks to you for your leadership in helping pass the shipwrecks bill a year or two ago. It is working, which is a good step for your state and for coastal states across the country.

I would also like, if I could, to endorse the comments and just recognize the comments made by Connie Harriman a few minutes ago about the administration's turnaround in its support for an appropriation from the Historic Preservation Fund for the coming year. Both she and Director Ridenour have done a nice job in engendering that support and I would like to not let the opportunity go by without commenting on it.

I am up here today in support of S. 844 and, in particular, to endorse two major parts of that bill. The first one is to strengthen the capacity for the sound management and administration of the Park Service. Secondly is the provision to elevate the role of historic preservation within the park service and accordingly within the whole Federal Government.

The Trust has a very direct stake in the sound administration of the Park Service. As you know, Senator, our appropriation comes in the form of a grant through the Park Service to the National Trust. The National Park Service is the public partner in the old, now better than 25- or 30-year old public/private partnership for historic preservation in the United States; the National Trust is the private partner. We want our partner to prosper. Straightforward proposition.

Three specific features of S. 844 strike me as being worth particular endorsement. The first one is upgrading the position of the Director. And for other reasons and in other places I am on record as saying that there are too many PAS jobs in the Federal Government. I feel that rather strongly, when we have 2,500 or 3,000 Senate-confirmed presidential Appointees and then we complain about how hard it is to put a government in place, it seems to me, hardly surprising. Adding one more to that list may be too much, but I think in this particular case and taking this in context, this is a sound step to convert the Director of the National Park Service to a PAS Senate-confirmed job, Executive Level 4. That seems to be to me a sound policy in this particular instance.

Secondly, and hardly surprisingly, the National Trust is delighted that the proposal to create a deputy director in the Park Service for specifically historic preservation and cultural resources. Not only are we delighted, but we think that it is also a sound recognition of the function and the mission of the Park Service, a step that we endorse heartily.

Thirdly, we feel very strongly in favor of retaining the National Park Service as a unit, an administrative unit, within the Depart-

ment of the Interior. We are, in that regard, strongly saying we ought to reinvigorate a time-tested, time-proven arrangement. Let us not break that part that does not need to be broken. Let us fix what we already have.

On that note, as I said, I'm pleased to endorse the prompt passage of S. 844. And thank you and Mr. Vento for bringing this bill along.

Thank you, Senator.

[The prepared statement of Mr. Walter follows:]

National Trust for Historic Preservation

Testimony of

J. JACKSON WALTER
President
NATIONAL TRUST FOR HISTORIC PRESERVATION

before the

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

on S. 844

February 21, 1990

It is a pleasure to be here today on behalf of the trustees and nearly one quarter of a million members of the National Trust for Historic Preservation. Mr. Chairman, we have long advocated passage of this legislation. Senator Bradley is to be commended for joining with Congressman Vento in urging Congress to strengthen the National Park Service, one of our nation's most respected government entities.

The essential mission of the National Park Service -- to protect natural, historic and cultural resources for current and future enjoyment -- requires professional independence and a long term commitment to the stewardship of natural and cultural resources. I believe this bill, if enacted, would go far toward giving the National Park Service the authority to best care for our national treasures.

In his budget message, President Bush talked about the importance of preserving America's heritage. National parks, of which sixty percent are historic sites, are the icons of this heritage.

The National Trust and the Park Service

The National Trust for Historic Preservation has a fundamental stake in the successful operation of the National Park Service. Congress has linked up in a public-private partnership to carry out this nation's historic preservation program. We rely on the National Park Service to make decisions about the historical significance of properties, to set high standards for historic rehabilitation, and to administer the tax credits that have made possible so many of the major historic preservation projects in the past decade.

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Annually, we receive a grant from Congress that is administered by the National Park Service. The grant enables us to make small grants for technical assistance, loans for historic restorations, maintain our historic house museums, and, through our headquarters here in Washington and our seven regional and field offices, provide a range of other services that help us carry out our Congressional mandate to foster private sector support for historic preservation.

Less than two weeks ago I had the pleasure of appearing in the House before Congressman Vento to discuss funding for the historic preservation program in fiscal year 1990. I was glad to be able to join with the Administration in calling for funding for the National Trust and the state historic preservation officers. After eight years of "zero funding" requests, I welcome this chance to work with an administration that understands historic preservation to be one of the best investments that we as a nation can make.

Director of National Park Service Strengthened

The bill also calls for Senate confirmation of and a five year term for the Director of the National Park Service, and states that the Director may only be removed for cause. This will provide a level of independence, especially as the bill broadens the Director's authority in hiring, firing, spending and policy matters. The National Trust strongly endorses such an enhancement of the Director's discretion and ability to run the agency.

Just under one year ago, James Ridenour was sworn in as the Director of the National Park Service. He brings to bear on this position his experience as Indiana's State Historic Preservation officer and as a manager of natural and cultural resources in that state. He has assertively expressed to Congress and others the National Park Service's view that the historic rehabilitation tax credit is an effective way to stimulate the preservation of historic sites. In his recent testimony on the administration's new appropriations request, Director Ridenour took pride being the first Director in nearly a decade to bring to Congress a request to fund both the National Trust and the state historic preservation offices. We look forward to working cooperatively with him to ensure that the appropriated funds do the maximum amount of good to preserve historic resources.

Deputy Director for Historic Preservation and Cultural Resources

The creation of a Deputy Director for Historic Preservation and Cultural Resources reflects an elevation of historic preservation's importance within the National Park Service that the National Trust endorses enthusiastically. While historic preservation traditionally has been viewed by some as only an

incidental part of the work of the National Park Service, from our point of view the work of the National Park Service has enormous consequences for the state of historic preservation in this country.

The National Trust welcomes the prospect of working with such a Deputy Director and particularly endorses the language directing the appointment to be made "from among the professional employees of the National Park Service." Given the caliber of National Park Service employees, this requirement is a good indication of the seriousness with which the Deputy will take the preservation of historic resources both inside and outside the National Park System.

New Administrative Structure Desirable

Even though the role of Director Ridenour and his colleagues will be strengthened under this legislation, the National Park Service will not become an independent agency. It will be a part of a cabinet-level agency, with an advocate at the highest levels in the administration. At the same time, it gives the Director appropriate authority to administer the agency, including the ability to make personnel, planning and other professional decisions. The National Park Service will continue to be able to work with other agencies of the Interior Department for a coordinated approach to the management of public lands.

The Senate bill contains a National Park System Review Board to conduct a "continuing review of programs and activities" mandated by the Act. This board, which was dropped from the House-passed version of the bill and is not essential to the effectiveness of the legislation, would be composed of Presidential appointees who can fit the objectives of the National Park Service into overall governmental policies. The appointees would be experts who, as the bill states, "because of education or experience, are considered knowledgeable regarding policy issues affecting the natural and cultural resources of the Nation." The fact that these members could only be removed for cause helps ensure that the Board would use its expertise independently and without concern for censure.

Conclusion

From our perspective, the goal of this bill -- allowing greater discretion to the Director and other professionals in the National Park Service -- is sensible and desirable. We will be working with the Administration to carry out the protection of our nation's heritage, which President Bush has identified as one of the top items on his agenda, and believe that this bill will give that partnership the tools required to do the job.

Senator BRADLEY. Let me thank all three of you for your support and your testimony, but in addition for the specific examples that you brought to the Committee's attention. I think that your help will be absolutely essential for this bill to progress, as we all hope it will.

Thank you, very much.

I would like to call, if I could——

Let us have Mr. Jack Sobel come up to testify on S. 1360 and H.R. 2844. I have to step out for a minute. You might begin your testimony, and I will probably be back by the time you are finished. That does not mean I am not going to listen to you, but you may have the option. We can call a brief three-minute recess, and then I will be back in. If I am not in at 3:30, you may begin.

[Recess.]

Senator BRADLEY. All right, Mr. Sobel, you may begin.

STATEMENT OF JACK A. SOBEL, DIRECTOR, CENTER FOR MARINE CONSERVATION

Mr. SOBEL. Mr. Chairman, good afternoon. My name is Jack Sobel, and I am the Director of the Center for Marine Conservation's Marine Protected Areas Program. CMC is a nonprofit citizen's organization dedicated to the conservation of living marine resources and their habitats.

We have a 10-year history of active involvement on issues concerning marine protected areas, and our involvement and experience with National Marine Sanctuary Program, which already has provisions for the recovery of damages, is particularly relevant to this subcommittee's consideration of two bills that would provide similar protection to marine resources located within our National Park System.

We would like to express our thanks for this opportunity to present our views. Having been a resident of New Jersey for 29 years before moving to Washington two years ago, I am particularly pleased to provide our views to my former senator.

We strongly support the enactment of S. 1360 or H.R. 2844, either of which would provide for the recovery of damages for the injury to the value marine resources of our National Park System. Enactment of such legislation will clarify liability with respect to damage done to Park System resources, emphasize the authority to recover awards for such damages and ensure that costs, damage assessment and mitigation and restoration and replacement of damaged resources.

Requiring that recovered sums be applied to the damaged Park System unit is especially important since it ensures that funds spent on these activities will not come at the expense of other important park operations. Senator McClure's comments on fiscal constraints of the Park Service emphasize the importance of this.

The designation of an area as a National Park System unit or a National Marine Sanctuary, recognizes the national significance and outstanding value of the area's resources. When such resources are damaged, it is imperative that the responsible party be held fully accountable and that damages recovered are applied to restoring the area's lost value.

In 1988, the Congress and the administration recognized this and strongly supported amendments to the Sanctuary Program legislation that provided for recovery of damages to sanctuary resources, very similar to those now being proposed for the Park System. We agree with the administration that Park System resources deserve the same special consideration presently afforded to marine sanctuary resources from damages, and were encouraged to hear that they support the proposed legislation.

However, we are concerned that the two amendments they propose would significantly weaken the legislation and prevent Park System resources from receiving this same consideration. We strongly disagree with the proposed amendment to exclude claims or liabilities arising under the Clean Water Act and CERCLA. Nor do we believe that this is merely a technical matter as they suggested. Instead, we believe that the legislation should handle such claims in a manner consistent with the existing sanctuary law and with claims arising from other types of damage.

CWA and CERCLA do not, as it is my understanding, guarantee that funds would be returned to the National Park Service. Handling damage from oil and other toxic spills in a different manner would withhold important protection from our parks. Do the resources of our National Parks, including those in Alaska damaged by the Valdez spill or others such as Gateway National Recreation Area in your home state, not deserve the same protection from damage due to spills that Key Biscayne would receive from damage to its coral reefs from groundings?

We also disagree with their suggestion that some of the funds collected for damage done to our park resources be returned to the general treasury. As defined in the legislation, these damages involve the reduction of value to park resources. Putting recovered funds back into the damaged park unit ensures that the loss of value to the damaged park is minimized.

We, therefore, strongly advocate that recovered damages be retained and used for minimizing, restoring and replacing its lost value. This would also be consistent with existing sanctuary regulations.

One potential problem with using these sums for funding, response and restoration is the delay that might—the delay between injury to the resource and the settlement of resulting litigation. For this reason, a portion of any settlement or award resulting from injury to Park resources should be placed in a revolving fund to be used in subsequent incidents.

The successful application of similar provisions for damage recovery included in the 1988 reauthorization of National Marine Sanctuary Program provides support for extending similar protection to our national parks.

Damage to our Nation's most sensitive and valuable marine resources from vessel groundings and spills continues to occur. Early last spring, the Exxon Valdez provided the most dramatic example of this when millions of gallons of toxic crude oil escaped from its ruptured hull and coated hundred of miles of pristine Alaskan coastline, including the shorelines of three National Parks. What resulting legal action will evolve from this is uncertain. However, under current law, it is my understanding, that even if monies are

recovered for the damaged park resources, they would not be returned to the damaged park. Instead they would go to the general treasury.

Although unusual because of its magnitude, the Valdez tragedy is not an isolated example. For example, during a 17-day stretch spanning October and November of last year, four major vessels ran aground in the Florida reef tract, pulverizing large sections of living coral reef.

Lawsuits have been or will be filed in each of these cases. Three of these cases occurred within the Key Largo National Marine Sanctuary, and any damage funds recovered from these cases will be returned to the sanctuary. However, the fourth grounding, as mentioned previously, occurred in Fort Jefferson National Monument, and any damages collected from Federal action in this case would be returned to the general treasury.

In conclusion, we support the enactment of the damage recovery provisions contained in both S. 1360 and H.R. 2844 as they relate to the protection of marine resources within National Park System units.

Thank you, and I would be glad to answer any questions you might have.

[The prepared statement of Mr. Sobel follows:]

Center for Marine Conservation
Formerly Center for Environmental Education, Est. 1972

TESTIMONY OF JACK A. SOBEL

DIRECTOR OF THE HABITAT CONSERVATION AND

MARINE PROTECTED AREAS PROGRAM OF THE

CENTER FOR MARINE CONSERVATION

BEFORE THE SENATE SUBCOMMITTEE ON

PUBLIC LANDS, NATIONAL PARKS AND FORESTS

REGARDING S. 1360 AND H.R. 2844, BILLS DEALING WITH

THE LEGAL BASIS FOR RECOVERY OF DAMAGES TO

NATIONAL PARK SYSTEM MARINE RESOURCES

FEBRUARY 21, 1990

Mr. Chairman, members of the Subcommittee, good afternoon. My name is Jack Sobel and I am the Director of the Center for Marine Conservation's (CMC) Habitat Conservation and Marine Protected Areas Program. CMC is a non-profit citizens organization dedicated to the conservation of living marine resources and their habitats. We have a 10-year history of active involvement on issues concerning marine protected areas. Our involvement and experience with the National Marine Sanctuary Program, which already has provisions for the recovery of damages for injury to marine resources located within sanctuaries, is particulary relevant to this Subcommittee's consideration of two bills that would provide similar protection to marine resources located within our National Park System.

We would like to express our thanks for the opportunity to present our views on proposed legislation concerning recovery for damages to national park resources. Having been a resident of New Jersey for twenty-nine years before moving to Washington two years ago, I am particularly pleased to provide our views to my former Senator.

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We strongly support the enactment of S. 1360 or H.R. 2844, either of which would provide for the recovery of damages for the injury to the valuable marine resources of our National Park System. Enactment of such legislation will clarify liability with respect to damage done to park system resources; emphasize the authority to recover awards for such damages; and ensure that monies recovered from such damages are used to cover response costs, damage assessment and mitigation, and restoration and replacement of damaged resources. Requiring that recovered sums be applied to the damaged park system unit is especially important since it facilitates effective response, assessment, mitigation, and restoration, and ensures that funds spent on these activities will not come at the expense of other important park operations.

The designation of an area as a National Park System unit or as a National Marine Sanctuary recognizes the national significance and outstanding value of the area's resources. The special values of these resources require that we provide the strongest possible protection for them so that they remain intact for future generations to enjoy. When such resources are damaged through illegal, irresponsible or negligent activities, it is imperative that the responsible party be held fully accountable and that damages recovered are applied to restoring the area's lost value. Due to the special national significance of areas included in either the National Marine Sanctuary Program or the National Park System, there is reason to provide them with protection above and beyond that given to other areas. The designation of such an area acknowledges that it is different and worthy of special treatment.

In 1988, the Administration recognized this and strongly supported the purpose of amendments to the sanctuary program legislation that provided for recovery of damages to sanctuary resources very similar to that now being proposed in S. 1360 and H.R. 2844 for park system resources. When H.R. 2844 was originally considered as Title II of H.R. 1485 in 1989, the Administration again recognized the goals of the title as laudable. However, on that occasion they concluded that compensation for damages to national parks, other Federal resources and private property must all be handled uniformly. The rationale for this conclusion was not provided and it is unclear how it could be reconciled with the Administration's previous support of the sanctuary amendments. Therefore, we vigorously disagree with their conclusion that national parks do not deserve the same special consideration already granted to marine sanctuaries and urge that similar legislation be enacted covering park system resources.

Another argument that might be presented against mandating that recovered funds be used for response costs, damage assessments, mitigation, restoration and replacement of damaged resources, and management and improvement of the damaged park unit is that this process bypasses the normal authorization and appropriations process. Although this is true, we believe that

such a bypass is justifiable in the case of damage recovery. Since it is impossible to anticipate when accidents will occur and damage sanctuary resources, the authorization and appropriation process cannot provide funds for the purposes listed above in a timely manner. Therefore, when an accident does occur monies would have to be diverted from other normal park operations to cover these costs resulting in additional diminution of the parks value to the public. Putting recovered funds back into the damaged park unit ensures that the loss of value to the damaged park unit is minimized. We therefore strongly advocate that recovered damages be retained and used for the damaged park unit.

A potential problem with using recovered sums for funding response and restoration is the delay between injury to the resource and the settlement of resulting litigation. For this reason, a portion of any settlement or award resulting from injury to park resources should be placed in a revolving fund to be used in subsequent incidents. Unless such a fund is established, funds from normal park operations will continue to be diverted to cover response activities or these activities will not take place. Creation of such a fund avoids placing a park manager in the position of choosing between damage response and other park activities.

The successful application of similar provisions for damage recovery included in the 1988 Reauthorization of the National Marine Sanctuary Program provides support for extending similar protection to our national parks. Several vessel accidents in the mid-1980's which resulted in massive damage to sanctuary resources supplied the impetus for including these provisions. In particular, two incidents involving the M/V Wellwood and M/V Puerto Rican inflicted millions of dollars of damages and required considerable expenditures by federal agencies for response, assessment, mitigation, and restoration. However, under existing law at that time, all recovered sums were to be returned to the general treasury and funds expended by agencies on these incidents would have come at the expense of their normal operations.

Fortunately, the passage of the 1988 reauthorization legislation corrected this problem and funds collected under the settlements are now being directed back to the sanctuary program for reimbursement of response costs and restoration and monitoring of the damaged areas. Unfortunately, these funds cannot prevent the damage inflicted to a protected area. However, they can minimize the loss of value to the public associated with it. In 1987, a similar grounding occurred in Key Biscayne National Park. The Justice Department filed suit in that case also and did recover a settlement. The lack of provisions to return such funds to the National Park Service to cover response and restoration costs resulted in these funds being returned to the general treasury. As a result, these funds have not been available for either reimbursing response costs or restoring the damaged resources.

Damage to our nation's most sensitive and valuable marine resources from vessel groundings and spills continues to occur. Early last Spring, the Exxon Valdez provided the most dramatic example of this when millions of gallons of toxic crude oil escaped from its ruptured hull and coated hundreds of miles of pristine Alaskan coastline including the shorelines of three national park system units. Whether legal action will be taken to recover monies for injuries to the park resources remains unclear. Under current law, even if such monies are recovered, they would not be returned to the damaged park. Instead, they would be returned to the general treasury.

Although unusual because of its magnitude, the Valdez tragedy was not an isolated incident. Vessel mishaps that result in damage to marine resources, including those within marine protected areas, are becoming increasingly common. During a 17- day stretch spanning October and November of last year, four major vessels ran aground along the Florida Reef Tract pulverizing large sections of living coral reef. Lawsuits have been or will be filed in each of these cases. Three of these occurred within the Key Largo National Marine Sanctuary and any damage funds recovered from these cases will be directed back to the sanctuary. However, the fourth grounding occurred in the Fort Jefferson National Monument and any damages collected from federal action in this case would likely be returned to the general treasury.

One area of concern with both bills as currently written regards the defense against liability based on activities authorized by Federal or state law. The scope of this defense should be sharply and clearly defined so that there is no confusion as to its meaning. Report language similar to that included in House Report 100-739 concerning similar language pertaining to sanctuaries would provide such clarification. Such clarification would prevent a defense of a vessel grounding on the basis of shipping being an authorized activity.

In conclusion, we support the enactment of the damage recovery provisions contained in both S. 1360 and H.R. 2844 as they relate to the protection of marine resources within National Park System units. In addition, we suggest that consideration be given to extending the damage recovery provisions beyond the limitation to marine resources to include terrestrial resources as well.

Thank you.

Senator BRADLEY. Thank you very much, Mr. Sobel. I appreciate your testimony, and it will be very valuable to the Committee as we think about how to move forward on S. 1360.

If you had one response to the Administration's testimony on S. 1360, what would it be?

Mr. SOBEL. I would say that we need to make sure that the monies collected under these bills would go back to the resources that are lost. As I understand the way the bill was written, the damages that would be collected would reflect the loss in value of the park. And it seems to me that they were suggesting there would be some reason to put some of this money that was in excess of what was needed in the park back into the general treasury. However, if you have defined the amount collected by the value of what was lost, you are inherently——

Senator BRADLEY. You are never going to get out of the park.

Mr. SOBEL. Right. You add two plus two and get six there.

Senator BRADLEY. Thank you, very much.

Mr. SOBEL. Thank you.

Senator BRADLEY. Our last witness today is Mr. John Camp, who is with the Wolf Trap Foundation for the Performing Arts and always a voice of reason and insight, and the Committee is looking forward to your testimony, Mr. Camp. Welcome to familiar surroundings and certainly this Subcommittee welcomes you.

STATEMENT OF JOHN C. CAMP, WOLF TRAP FOUNDATION FOR THE PERFORMING ARTS

Mr. CAMP. Thank you, Mr. Chairman. I would like to introduce to the Chairman Mary Frances Pierson, in the center. She is a volunteer head of the educational program of Wolf Trap over the United States.

Senator BRADLEY. Welcome to the subcommittee. We are honored.

Mr. CAMP. She and I belong to Kay Shouse's army of volunteers. Also with me today are Shelton Stanfill and Charlie Walters, who formally headed the Foundation activities.

Mr. Chairman, it is a privilege to appear before you. If it is all right, I would like to just cover some fundamentals here that may be of particular interest.

Senator BRADLEY. I think that would be advisable and your full statement will be inserted in the record.

Mr. CAMP. Mr. Chairman, a couple of years ago, Mrs. Shouse and the Wolf Trap Board asked me, as a volunteer, to attempt to do something about this big debt that seemed unmanageable.

I might mention at that point in time, when I became involved, the Foundation was simultaneously involved in lawsuits brought by contractors who built the facility asking for more money in the usual form of add-ons, extras, that sort of thing. This contract was let using government-type procedures. The Foundation was also involved at that time in lawsuits against the contractors, the designers, architects, insurers for defects in construction, materials, and design.

Ultimately they settled both sets of lawsuits, losing about a million or so on the cost of reconstruction of the cracked beam and

dealing with that problem, and they ended up agreeing to pay the contractor over $1 million for add-ons and that sort of thing, so they in effect had $2 million out there that they lost on that part of the go-around.

But for about a period of five years the Foundation has been involved in reconstruction after the fire and then rebuild after the cracked beam and that sort of thing, but if you go back to the beginning, it is relatively easy to see how this kind of problem could have developed.

They agreed with the Parks Service on a reconstruction of the original facility at a cost of some $18 million; several very talented, experienced, knowledgeable people told them that is what it would cost, and that is what the contract was. Naturally, it cost about $22 million and then they had a cracked beam problem and that was another $4 million-plus.

In the beginning, the Foundation had really said to this Congress, and I suspect to this committee, if you will lend us $8 million or $9 million, give us an equal amount, we can take the $18 million and replace this. Well, they proceeded to raise most of that money by volunteer, private donations from around the world, and the end result though, over all these years, is that all the money that they raised, the Foundation raised, and all the money the Foundation spent over this five or six years, just about equaled all of the money that the Foundation agreed to pay to the government.

So in one sense of the word the Foundation satisfied its obligation to raise $8, $9 million for this facility. It just did not go where it was intended, in the beginning, to pay the government back. It went to cover all of these additional costs.

So at the time I got involved we tried to figure out more about what this was all about and how it arrived, and one of the surprises to me was that the ticket sales cover about 62 percent of the cost of operation, and they looked at whether or not they could increase the ticket price, and people tell them there is an upper limit of where you can make a facility like that available to "all people" for which it was designed.

I guess a couple of years ago I started informal discussions with very senior people in the Department of the Interior, and between us we brought in a host of other people. We discussed the problems with senators and their staffs. We had meetings where we talked to GAO, we talked to everybody we thought had anything to do with this, except possibly OMB. We probably should have been talking with OMB, but we did not.

At any rate, we tried to figure out how to deal with this within the economic framework we found ourselves in. We had the financial people, between all of these folks that I am talking about, look at stretching this out over 30 years, with interest, without interest, with reduced interest.

We looked at deferring the payment for 30 years and putting an amount in a trust fund with the interest to accumulate on the trust fund over this period of time. We tried every device known to man or that could be conjured up by any of our people, and we just simply could not work out a way that we could pay this without significantly altering the operation of Wolf Trap.

Now, for example, the Wolf Trap Foundation conducts a Nationwide educational program for children and their teachers. It is a very elaborate, famous school with tremendous results, teaching children and their teachers how to deal with the performing arts. Something like 50,000 students are involved in this every year across the country.

At this point, they are spending about $1 million a year on this program. This program was begun in partnership with the government under the Head Start program, and money for several years was received from the Head Start program and that was put with funds donated by individuals to create this educational program. It is an absolutely fabulous program.

Between us all, we could not work out an alternate way to do this—that is, to deal with this obligation—that would not require massive increase in ticket prices, which would have an adverse result, massive changes in the educational program, which we think is one of the finest things that Wolf Trap does for the country. Everything we looked at, we found barriers that were just impossible for us to climb.

We went into the offices at that time, at the very highest level, and said look, we have a problem. We are here to work it out. Help us figure out what we can do. We will furnish you any information, we will bring anybody in that you want to talk to.

We have worked on this for a couple of years and what you have before you is the best thing that we have been able to put together, and we are open in saying, if there is another way to do it, we are anxious to talk to you about it. We just have not been smart enough to figure out any better way.

[The prepared statement of Mr. Camp follows:]

WOLF TRAP FOUNDATION
FOR THE PERFORMING ARTS

Testimony of John C. Camp
before the
Subcommittee on Public Lands,
National Parks and Forests
of the
Senate Energy and Natural Resources Committee

February 21, 1990

1624 Trap Road, Vienna, Virginia 22182 (703) 255-1900

I am John Camp, Chairman of the Government Affairs Committee and member of the Executive Committee of the Board of the Wolf Trap Foundation for the Performing Arts. I am appearing here today with Shelton Stanfill, President of the Foundation and Charlie Walters, Senior Vice President and Chief Financial Officer.

We are here to request your support for Senate bill S. 1859. This bill, as proposed, restructures the Foundation's outstanding obligation to the U. S. Government. As you know from the GAO reports of May and September 1988, the Wolf Trap Foundation for the Performing Arts does not have the financial resources to pay this obligation which stood at $15.8 million as of October 31, 1989. We are continuing to accrue interest at the rate of $150,000+ per month which is propelling our cumulative interest due the government beyond reality.

We are asking for your help and assistance to solve this problem of mutual concern, as it will not disappear unless dealt with. Many of you know the history...Mrs. Catherine Filene Shouse donated approximately 100 acres of her Virginia farmland to the U.S. Government. This land was accepted by Congress into the National Park System. She then provided the financial resources (approximately $2.0 million) to construct an outdoor amphitheater appropriately named the Filene Center. For ten years the Wolf Trap Foundation and National Park Service cooperated, in large part through a cooperative agreement, to make Wolf Trap a national treasure benefiting constituents and patrons from around the nation and throughout the world.

I would like to suggest the story ends here. Unfortunately, it does not. In April 1982, this self insured government building burned to the ground. The Wolf Trap Foundation was not then... and is not today ...responsible for the security and fire protection for this government building.

Having witnessed her gift to the nation destroyed by fire, Mrs. Shouse, with the support of the Board of Directors, a large public outpouring of sympathy and support from patrons, the Administration and the Congress, began immediately to organize a campaign to rebuild the Filene Center. While all parties acknowledged the Government's responsibility to rebuild the Filene Center, it was also understood that the U.S. Government could not move at the pace necessary to have another facility operational within a few years.

Reluctantly, the Foundation Board agreed to accept the responsibility to rebuild, for the second time, the Filene Center at an estimated cost of $18.0 million with the National Park Service. An agreement was reached to share the cost of this reconstruction effort between the U.S. Government and the Foundation. Since the Foundation was sustaining annual operating losses and had not begun its fundraising efforts for rebuilding, the U.S. Government granted half ($9.0 million) and loaned the balance ($8.0 million) as the fire had already generated $1.0 million in public support to rebuild the Filene Center. This loan was to be repaid in 5 years with interest.

The reconstruction effort, with the Foundation as contract administrator, literally consumed the staff and Board members for three years following the fire and during the reconstruction process. Countless meetings and hours were spent with Park Service staff and contractors, lawyers, engineers and architects. With little time left for its original responsibilities of programming, marketing and annual fundraising, the Foundation dealt with a myriad of problems relating to change orders, scheduling difficulties and the need for improvements in fire and safety equipment. I must confess, the Foundation was ill-equipped and staffed to handle the scope of this responsibility. As we all now know, the reconstruction cost escalated and money that was raised

to pay the government debt was instead used to pay contractors and subcontractors as change orders were approved jointly by the National Park Service and the Foundation.

The bill before you proposes a restructuring plan that would allow the Foundation a fresh start with ten years to retire the residual principle and interest amount by the use of credits for the Foundation's educational programs. Last fiscal year, the Foundation spent over $1,000,000 on its combined education programs. These programs have grown over the years and are now at sites around the nation teaching preschool and underprivileged children cognitive skills employing performing arts in the classroom. Let me take just a few moments to describe them to you.

The Wolf Trap Institute for Early Learning through the Arts is the premier education program of the Wolf Trap Foundation. The mission of the Institute is to demonstrate ways in which performing arts help preschool children learn. The Institute works with teachers and parents to develop methods using their arts as an integral part of daily interaction with children. By encouraging creative multisensory involvement in the learning process, the program helps children master and retain a variety of skills and concepts early in their education disciplines.

The Wolf Trap Institute employs the finest professional actors, dancers, musicians, storytellers, poets, and puppeteers to provide a variety of services to early childhood educators.

Current program offerings include:
ARTISTS IN RESIDENCE PROGRAM - The residency is a partnership between a professional artist and the early childhood educators of the sponsoring organization. The teachers learn from the artist's expertise in the performing arts; the artist benefits from the teacher's knowledge of early childhood education. Together, they develop and refine performing arts activities that reinforce the

curriculum while building self-confidence and creativity. These resident programs have served more than 200,000 preschool children, teachers, and parents since 1982.

TEACHER AND PARENT TRAINING WORKSHOPS - These workshops share the most effective methods and original activities developed by the program artists and are available nationwide. Institute artists have conducted workshops in thirty-two states and Japan for approximately 50,000 teachers and parents.

FIELD TRIPS - The Institute hosts a series of field trips designed to be a preschooler's introduction to live, professional performances. Approximately 30,000 children have attended Wolf Trap field trips with teachers and parents.

INSTRUCTIONAL MATERIALS - The Institute publishes a four-volume set of performing arts handbooks for teachers and parents which are available through the residency programs and workshops. Titles include: "Wake Your Wishes Up: A Creative Drama Handbook for Preschool Teachers," "Sing Your Sillies Out: A Music Handbook for Preschool Teachers" (with cassette), "Wiggle your Waggles Away: Creative Movement Handbook for Preschool Teachers" (with cassette), and "Artsplay: A Performing Arts Handbook for Parents of Young Children." The purpose of these handbooks is for lesson planning, training, and discipline.

Wolf Trap Institute affiliates are located in the Washington, D.C. metropolitan area, Baltimore, Maryland, Nashville, Knoxville, Chattanooga, and Crossville, Tennessee, Detroit, Michigan, Phoenix and Tucson, Arizona, Oakland and San Jose, California.

The following programs supplement Wolf Trap's commitment to education:

BARNSTORM! Programs for children are presented at The Barns of Wolf Trap for children 3-11. They feature a blend of folk and

traditional music, drama, puppetry, mime and storytelling. Since its inception in 1984, over 18,500 children and their parents have been reached. Weekday shows for elementary students conclude with a session that explores aspects of each performance.

Creative drama workshops for children 7-12 utilize improvisational acting to encourage individuality and the use of imagination.

THE INTERNSHIP PROGRAM makes a significant contribution to the training of future arts administrators and theater technicians. Thirty full and part-time internships are available each year. More than 250 students representing 25 states and the District of Columbia have participated in the development program since 1971.

Professional development opportunities for high school theater arts teachers include Technical Theater Workshops at The Barns and an annual Theater Fellowship sponsored by the University of Virginia. The latter has enabled teachers to work as Assistant Production Managers during the Opera Company's summer seasons.

PROGRAMS FOR SCHOOLS include the Short Play Festival which showcases three Fairfax County High School productions and the Shakespeare Festival which features play excerpts produced by elementary students and professional performances for intermediate and high school audiences. Rehearsals, special study projects and theater workshops have served 3,000 students to date.

THE SUMMER SERIES of master classes, workshops and Artalks provides fascinating insights into Wolf Trap's summer season. Open to all interested parties, the series has taken more than 6,000 students, young artists, interested groups and senior citizens behind the scenes to explore the artistic process.

THE WOLF TRAP OPERA COMPANY is designed specifically as a performance-oriented summer showcase for emerging singers at an

interim point between academic training and full-time employment in professional careers. The young performers are chosen anew each year through extremely competitive national auditions. On average, more than 500 singers apply each year to audition in one of five major cities for a position among the 15 to 20 artists chosen for participation in each summer's program. Once selected, the singers are assigned roles in opera productions performed by the company at The Barns of Wolf Trap and the Filene Center. Throughout the 10-week residency, the singers are guided by both experienced staff members and respected professionals, and share the Wolf Trap stages in performance with such internationally renowned guest artists as Anna Moffo, Jerome Hines, Evelyn Lear, and Thomas Stewart. Master classes provide an excellent opportunity for the guest artists to pass on their experience and advice to the young artists: in recent summers, the singers have had the opportunity to sing for and be evaluated by such esteemed performers as Beverly Sills, Placido Domingo, Elly Ameling, and Nicolai Gedda.

Wolf Trap Opera Company's dedication to producing contemporary American works has brought acclaimed revivals of such important operas as Menotti's The Saint of Bleecker Street, Ward's The Crucible, Joplin's Treemonisha, Giannini's The Taming of the Shrew, Blitzstein's Regina, Susa's Transformations, and Argento's Postcard from Morocco. Over the nineteen years of the troupe's existence, more than 250,000 audience members have attended 233 Opera Company performances of 84 different operas on the Wolf Trap stages.

Many millions worldwide have gained additional exposure to the operatic artform at its finest through Wolf Trap Opera Company's televised performances. One of Wolf Trap Opera Company's primary goals is to discover the finest operatic talents in the U. S., and a broad overview of the success stories of company alumni would fill many pages. While offering first-rate entertainment for Wolf Trap's patrons, the Wolf Trap Opera Company continues to guarantee the future of opera by training the stars of tomorrow.

The Audited Historical expenditures for these programs is as follows:

	FY 1986	FY 1987	FY 1988	FY 1989
Education Division	$ 64,469	$ 65,482	$ 94,946	$ 99,772
W.T. Institute	300,269	400,816	423,849	327,803
W.T. Opera Company	474,557	385,026	511,223	622,118
Totals:	$839,295	$851,324	$1,030,018	$1,049,693

On behalf of Wolf Trap's Founder, Catherine Filene Shouse and the Board of Directors of the Wolf Trap Foundation for the Performing Arts, we ask you to consider favorably this legislative bill that will restructure our obligation owed the U.S. Government in a manner that will allow the Foundation to continue to serve the public interest at America's only National Park dedicated to the Performing Arts and continue this successful public/private partnership.

Thank you.

Senator BRADLEY. I think that you have probably dealt with this as much, if not more, than most people have, and you have looked at it every which way.

One of the thoughts that occurs to me, or one point of clarification, is the GAO did this study, as you are probably aware, and they said the Foundation was not entirely without resources and that there were other options for repayment that were possible. What were they referring to?

Mr. CAMP. They were referring to the fact that the Foundation owns about 30 acres of property across the interstate highway from where Wolf Trap proper is, and that 26 or so acres was given by Mrs. Shouse and the other little acreages were bought from time to time, I think with money given by Mrs. Shouse again.

All this—it consists of several tracts. It is just not one 30-acre square there, it has got several pieces to it. But on this land there is located Wolf Trap Barns that seats about 350 people, all the parking that goes with that, the several buildings that Wolf Trap uses to house all of its activities—administration, marketing, public relations, sales, whatever—and in the summer when they have such huge numbers of people in their school here, they rent and bring in mobile homes or something to put the people in.

The long-range planning for this was, if they could get the debt behind them—I mean, they never envisioned this back before the fire—was to develop a whole conclave, so to speak, a set of buildings to house students in the summer, to provide for television activities which is now a big part of Wolf Trap, nationwide television.

So you have on there a number of structures, all of which are inadequate except the Wolf Trap Barns, but the facilities that they use for their administration, the president, all of these business activities, are embarrassingly inadequate, but we cannot really put a drive on to raise money to build adequate facilities until we get this debt paid, because people have already given for that and they will not give us any more, so we cannot have fund drives to build parking facilities.

Across the interstate the first thing you find is a sliver of land and you say well, why do you not make that into parking, and the answer is, where are we going to get the money? We cannot do facility fund-raising until we get this debt in some sort of structure that we can live with it.

All I am saying is, there is land there. It is in significant use, but the intent is to create much better, intense use over time to support the Wolf Trap facility.

Senator BRADLEY. So the GAO is advising sale of the land?

Mr. CAMP. Near as we can tell they said well, you have got 30 acres of land. That is an asset. Surely you can do something with this asset. It is in a valuable area. We had some conversations about it. They said, you have got an asset. Why do you not dispose of the asset? Well, we said, it was given by Mrs. Shouse with the intent to be used for Wolf Trap. Does the Park Service want it? And we were informally advised that the Park Service informally said they did not want it.

Senator BRADLEY. Well, you heard why when we had the discussion here earlier today and Senator McClure pointed out the backlog. You will be waiting a long time to get payment.

Mr. CAMP. All of the activities conducted on the Foundation property—that is, the schools and the administration for Wolf Trap and the marketing, all the other activities—are paid for by funds that have been raised by the Foundation, whereas if the Park Service took over all of this then presumably somebody would be back asking for money to pay for what now is covered by private gifts.

I think we have a very effective fund-raising program out there, Mr. Chairman. I have looked at that extremely carefully, first said well, can we not raise the money? Why do we not get some big companies to give us a bunch of money to pay this? The answer was, they already gave and it has already been spent. We have turned over every rock we could find, Mr. Chairman, to try to figure out a way to deal with this. This is the best we could come up with.

Senator BRADLEY. So basically your position, and the position of the Foundation is, basically, that there are no additional resources outside of restructuring?

Mr. CAMP. No, sir, and you see, if you recognize that we have to get the money some place to pay for 38 percent of the cost of operating the Wolf Trap facility, you are limited by where you are going to get the money.

Now, one program that was moderately seriously considered was well, why do we not take some of the money we have and pay the government with it, which will leave a significant deficit in operations. Then we say to the Park Service well, we have $500,000 a year less because we have to take that out of our operations and pay the government, so we have to ask you for an increase in your subsidy, and that did not seem to make any real good sense.

Senator BRADLEY. Not in these times. Let me ask you, what did you think of the administration's reservations?

Mr. CAMP. Well, I would say frankly, I was disappointed in this way. The reservations in their written statement says that perhaps they could have more efficient management.

I might suggest to you that I do not think the lights go on out there every day unless the Park Service is involved. We have a very close relationship with the Park Service. If there is anything wrong with the way this facility is managed and operated, I am sure the Park Service already knows it, because they are involved in the day-to-day management and operation of this entire facility.

So I would say that is almost explored on a daily basis by whoever is responsible in the Park Service, and I might tell you that this is no lovey-dovey situation out there. I mean, they go at it hammer and tongs about the way this thing should be done. I mean, it is just the way it is.

Senator BRADLEY. You mean the Park Service and the Foundation?

Mr. CAMP. I mean, they do not kiss each other on the cheek every morning. I have sat in on quite a few of their discussions, and let me say they are what are referred to out at the Capitol as frank discussions of the issues.

The other reference was that this might set a bad precedent, but it seems to me there may be other precedents out there, but this government permitting the continuation of one of the finest, broadest-based schools in the performing arts for young people and their

teachers is something that could not possibly set a bad precedent. It could only set good precedents.

Senator BRADLEY. What did you think of their recommendation on discussions with the Secretary?

Mr. CAMP. Well, I have had as high as Under Secretary level—I mean, I went to the Under Secretary, or the man just under the Under Secretary back in the last administration and started the discussion: folks, we have a problem. Let us see if we cannot figure a way to work it out.

I did that, and then I had extensive meetings with the highest level in the Department trying to figure out a way to do it, and that is where we explored everything. We had blackboards up there with all of the schedules of how different things would work out and we would just get no, that will not work, either. But we have already done that, if you will permit me to say so, for the last couple of years. I personally have done it, so I know what happened.

Senator BRADLEY. So you feel like you have exhausted the Treasury rescheduling route?

Mr. CAMP. Yes, sir. I have literally done my best on this, Mr. Chairman.

Senator BRADLEY. If someone said well, that was the previous administration. Here you have a new administration, a new Secretary of the Treasury, why do you not try it?

Mr. CAMP. Well, there are some holdovers between the two administrations who are thoroughly familiar with everything we have done, and at least one of them was sitting here. There are no secrets in that whole scenario.

Senator BRADLEY. I think the committee believes that this is a valuable resource. I appreciate your testimony, and I think it has been very helpful in allowing us to focus on what are the choices.

Mr. CAMP. We will work with anybody. We will work with you—you know, we are just saying we will go anywhere you want us to go, we will try anything you want us to try. We will work with Interior—they have been most gracious and most helpful, and I think very objective over the last couple of years.

Senator BRADLEY. Well, I think there is a desire in all parties to continue the conversation to try to resolve the problem, and I know that your interest will be a big step in that direction.

Mr. CAMP. Thank you, sir.

Senator BRADLEY. Thank you very much.

The committee is adjourned.

[Whereupon, at 3:54 p.m., the hearing was adjourned.]

[On February 28 and March 21, 1990, the following questions were sent to the Department of the Interior. No responses were received at the time the hearing was sent to press.]

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United States Senate
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, DC 20510-6150

February 28, 1990

Honorable Constance Harriman
Assistant Secretary for Fish and Wildlife and Parks
Department of the Interior
Washington, DC 20240

Dear Secretary Harriman:

Thank you for your testimony on February 21, 1990 regarding S. 844, S. 1360 and S. 1859. I have enclosed several questions to be answered in writing for inclusion in the Hearing Record. Please submit your responses to these questions as soon as possible.

Sincerely,

Dale Bumpers

Dale Bumpers
Chairman
Subcommittee on Public Lands,
National Parks and Forests

DB:dmn

Questions on S. 1360

1) What authority does the Federal Government presently have to prevent damage to Park resources?

2) What civil and criminal actions can be brought in the event of actual damage to Park resources?

3) Subject to the availability of funds, does the Secretary have current authority to replace or restore damaged Park resources?

4) Subject to any limitations contained in the organic legislation for individual units, does the Secretary have general authority to acquire Park resources?

5) S. 1360 includes within the definition of "damages", the value of any significant loss of use of a resource pending its restoration or replacement. How would such value be calculated?

6) Would the term response cost include the costs to the federal government of obtaining injunctive relief?

7) Does the term "park system resource" include resources within the external boundaries of a unit to which the United States does not have title?

(a) As drafted, would this legislation provide the United States with a cause of action with respect to resources which have not been acquired by the United States based solely on the location of such resource within the boundaries of a unit?

(b) The definition of "regimen" includes both water column and submerged lands. Where the submerged lands were transferred to States under the Submerged Lands Act or otherwise, would cession of such lands be required prior to an exercise of the authorities contained in this measure?

(c) Would a cession of jurisdiction by the affected State also be required?

8) Is there any de minimis exception to current authority to prosecute individuals who damage park resources?

(a) If not, would this legislation provide such a defense to prosecutions brought under current authority?

9) Does the Federal Government presently have the ability to recover response costs from a person who destroys or injures a Park resource?

10) The measure would permit the Secretary to use recovered sums to, inter alia, acquire the equivalent of park system resources. Would this authority include the use of eminent domain?

(a) Would this general authority supercede any limitations contained in the organic legislation for a particular unit?

(b) Would this authority be subject to the priorities

contained in the reports accompaning annual Appropriation Acts?

(c) How would the Secretary determine what is an equivalent resource?

(d) Could sums recovered from damage to a resource in one State be spent in another State?

11) What does Section 2 add to current authority available to the federal government?

12) Would the authorities contained in this measure be in addition to or in lieu of remedies otherwise available to the federal government under federal or state law, or as a landowner, under common law?

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United States Senate
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, DC 20510-6150

March 21, 1990

Honorable Constance Harriman
Assistant Secretary for Fish and Wildlife and Parks
Department of the Interior
Washington, DC 20240

Dear Secretary Harriman:

Thank you for your testimony on February 21, 1990 regarding S. 844, S. 1360 and S. 1859. I have enclosed several questions submitted by Senator Wallop on S. 844 to be answered in writing for inclusion in the Hearing Record. Please submit your responses to these questions as soon as possible.

Sincerely,

Dale Bumpers
Chairman
Subcommittee on Public Lands,
National Parks and Forests

DB:dmn

Malcolm Wallop

SENATOR MALCOLM WALLOP
QUESTIONS ABOUT NPS REORGANIZATION (S. 844)

I believe that several key provisions of S. 844 would violate the U.S. Constitution. First, S. 844 provides that the President would appoint the Director to a 5-year term, but could only remove him for cause. Without a doubt this "for cause" removal provision is designed to limit the President's ability to supervise the Director.

o Is it your opinion that this provision violates the principle of separation of powers? If so, please indicate how.

Next, S. 844 allows the Director to transmit information to Congress "without review, clearance, or approval by any other administrative authority."

o Do you consider this a violation of the separation of powers doctrine? If so, please indicate how.

Finally, S. 844 authorizes the Park System Review Board to submit its own alternative Park Service budget to Congress without review by the President.

o Does this provision violate the Constitution? If yes, please indicate how.

The Congressional Research Service asserts that none of S.844's provisions would violate the Constitution.

o Can you refute this argument?

APPENDIX

Additional Material Submitted for the Record

STATEMENT OF

JOHN O. McGINNIS

DEPUTY ASSISTANT ATTORNEY GENERAL

OFFICE OF LEGAL COUNSEL

DEPARTMENT OF JUSTICE

BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS,

NATIONAL PARKS AND FORESTS

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

FEBRUARY 21, 1990

Mr. Chairman, I appreciate the opportunity to provide your Subcommittee with the views of the Department of Justice on S.844 and H.R.1484.

Mr. Chairman, the Department opposes carving a new independent agency to administer the National Park system out of the Department of the Interior. Such a proposal is deeply inimical to our basic constitutional structure, which is founded on the principle that the President and those who are subordinate to him must account to the voters for the conduct of their offices. Hence, the Framers vested "[t]he executive Power" in a single person, the President. U.S. Const., Art. II, sec. 1 (emphasis added); see also The Federalist No. 70 (A. Hamilton) (Everyman's Library ed. 1942) (explaining need for unitary Executive). The overriding purpose of these bills, however, is to remove from any effective presidential control an agency that has historically been a part of the Department of the Interior -- and thus a part of the Executive Branch -- and that discharges functions of a wholly executive character. The logic of this proposal is inherently illimitable, since if Congress has the power to dismember the Interior Department in this way, then it can do the same to any other Cabinet department or Executive agency. In short, Congress can balkanize the Executive into a plurality of different actors, all of whom lack ultimate political accountability to the voters. The inevitable consequence would be -- as Hamilton forewarned -- to "conceal faults" and "destroy responsibility" for Executive branch decision. The Federalist No. 70, at 361, supra.

The relevant provisions of the bills are as follows. S. 844 would establish a National Park System Review Board ("Review Board") and create a National Park Service ("Service") headed by a Director ("Director"). The bill provides that the Review Board must maintain continuing review of the programs and activities of the Service and of existing and proposed national park system units, submit annual recommendations for improved management and, concurrently with the submission of the annual budget of the United States by the President, transmit to Congress its own budget recommendations. Further, the Review Board must provide any other information on the request of any committee or subcommittee of Congress without review, clearance, or approval

by any other administrative authority, except to the extent the Board deems such review appropriate. The Director, who is to be appointed by the President subject to the Senate's advice and consent, is charged with performing most of the substantive responsibilities with respect to the Service that now belong to the Secretary of the Interior ("Secretary"). At the same time, the Director is to be removable by the President only for inefficiency, neglect of duty, or malfeasance in office. Notwithstanding any other provision of law or any rule, regulation, or policy directive, he or she is also authorized to communicate to Congress without review, clearance, or approval by any other administrative authority.

H.R. 1484, which passed the House of Representatives on July 17, 1989, is similar to S. 844, except that it would not create the National Park System Review Board.

Our objections focus on the bills' curtailment of the President's constitutional powers, through removal and indeed through appointment, to supervise and control the work of the Director. We also object to the independent reporting provisions of both bills, which again sever the proposed new entity or entities from the Executive branch.

1. The bills' limitations on the President's authority to remove the Director infringe on the President's constitutional responsibility to "take Care that the Laws be faithfully executed." U.S. Const., Art. II, sec. 3.

a. The functions of the Director are purely executive. S. 844, sec. 2(b), directs the Secretary to "delegate" to the Director "all functions and authorities of the Secretary regarding the administration of the national park system and all other functions and authorities exercised by the Director of the National Park Service as of July 1, 1988." The Secretary is, however, to retain the authority and responsibility for the Service's budget and for conveying information regarding the national park system to and from the Cabinet. The Director is guaranteed independence in the performance of his functions by the assurance that neither he nor any officer or employee of the Service is to be responsible to, or subject to the supervision or direction of any officers, employees, or agents of the Department of the Interior. Moreover, the Director may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. These provisions also occur in H.R. 1484.

We believe that any provision purporting to limit the President's power to remove the Director is unconstitutional.[1]

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[1] The language of the provisions of both bills, limiting removal of the Director to "inefficiency, neglect of duty, or

(continued...)

The President is the head of a unitary executive branch, see U.S. Const., Art. II, sec. 1, and as such has a duty to "take Care that the Laws be faithfully executed, " id., sec. 3, to coordinate and supervise his subordinates, and to ensure that the executive branch speaks with one voice. See generally Myers v. United States, 272 U.S. 52, 163-64 (1926). One of the central ways that the President maintains his authority over his subordinates is through his power to remove subordinate officers of the executive branch.[2]

b. Our views on this restriction on the President's removal authority are consistent with the Supreme Court's analysis in Morrison v. Olson, 108 S. Ct. 2597 (1988) ("Morrison"). There the Supreme Court upheld a statute that limited presidential

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[1](...continued)
malfeasance in office" makes the constitutional problem unavoidable, as the phrase is precisely the same one used in Humphrey's Executor v. United States, 295 U.S. 602, 619 (1935). It must therefore be assumed that Congress intends to make the Director, like the Chairmen of the Federal Trade Commission or the Interstate Commerce Commission, the head of a so-called "independent agency."

[2] Decisions after Myers which upheld restrictions on the President's removal power, whatever their force after Morrison v. Olson, 108 S. Ct. 2597 (1988), do not support insulating the National Parks Service from presidential control. See Humphrey's Executor v. United States, 295 U.S. 602 (1935); Wiener v. United States, 357 U.S. 349 (1958). As the Supreme Court explained in Wiener, the "sharp differentiation" it had drawn between officials who were removable by virtue of the President's constitutional power and those officials as to whom Congress might restrict the removal power derived "from the difference in functions between those who [were] part of the Executive establishment and those whose tasks require absolute freedom from Executive interference" (357 U.S. at 353 (emphasis added)). Performance of the functions reassigned by these bills to the Director can hardly require "absolute freedom from Executive interference," since the functions have historically been performed by the Secretary of the Interior, who of course has long been a "part of the Executive establishment." Moreover, although the Director would have some rulemaking and even quasi-adjudicatory functions, see 16 U.S.C. 3 (Secretary's duty to make rules and regulations for National Park Service); 36 C.F.R. § 9.14 (appeals from Regional Director's decisions under Mineral Management section of regulations); id., § 9.49 (appeals from Regional Director's decisions regarding nonfederal oil and gas rights), none of these functions is of such a kind as to distinguish the Director from other Executive branch officials who perform important managerial tasks.

control over an executive branch official whose tenure was protected by a "for cause" removal provision. Id. at 2619. Morrison, however, provides that the President's control over inferior officers in the executive branch may be reduced only in limited circumstances. Id. Of particular relevance here, the Court in Morrison stressed that the principles applicable to the constitutionality of restrictions on the President's removal authority are designed "to ensure that Congress does not interfere with the President's exercise of the 'executive power' and his constitutionally appointed duty to 'take care that the laws be faithfully executed' under Article II." Id. at 2618. Accordingly, the Court held that the constitutionality of a "for cause" removal provision turns on whether the removal restrictions "impede the President's ability to perform his constitutional duty," and stated that the functions of the officer whose removability is limited must be analyzed in that light. Id. at 2619.

Among the Court's primary points was that the "for cause" removal provision for the independent counsel was constitutional because "the independent counsel is an inferior officer under the Appointments Clause, with limited jurisdiction and tenure and lacking policymaking or significant administrative authority." Id. A comparison of the status and functions of the independent counsel, analyzed in Morrison, and the status and functions ascribed to the Director by S. 844 and H.R. 1484 illustrates why the "for cause" provision in the bill is unconstitutional.

First, the Director, appointed by the President with the advice and consent of the Senate, would not be an inferior officer. U.S. Const., Art. II, sec. 2, cl. 2. Such individuals, especially when placed in a Department whose head is also a principal officer subordinate to the President,[3] have traditionally been viewed as being at the heart of that corps of officers whom the President must have unfettered discretion to supervise if he is to execute the law in a unified and coherent fashion.

Second, the Director would not have jurisdiction as limited in time and scope as that of the independent counsel in Morrison. Unlike the independent counsel, the Director's tenure would be for the considerable term of five years. Moreover, the Office itself has no limit to its duration. Further, the functions to be transferred to the Director from the Secretary are extremely comprehensive in scope.

Third, unlike the independent counsel in Morrison, who is generally to follow the prosecutorial guidelines established by

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[3] Both bills state that the Service "shall be within the Department of the Interior."

the Department of Justice, see 28 U.S.C. § 594(f), the Director exercises important policy determinations without any statutory direction to follow policy guidelines established by the Department of the Interior.

Finally, unlike the situation in Morrison, where there was arguably an inherent conflict of interest between the President's duty to prosecute individuals and his putative concern for protecting his closest personal advisers, there is no conflict between the President's duty to execute the law and the Director's duty to carry out the duties that are now the responsibility of the Secretary.[4]

Because the "for cause" removal provision is designed to limit the President's ability to supervise the Director, we believe that it cannot be reconciled with the separation of powers principles embodied in our Constitution.

2. The bills also encroach unconstitutionally on the President's power to appoint principal officers of the United States, U.S. Const. Art. II, sec. 2. They do so by purporting to restrict those whom the President may nominate as Director to "persons qualified, by training and experience and by demonstrated ability, to administer, protect, and preserve the natural and cultural resources of the United States." See section 2(a) of S. 844; section 1(a) of H.R. 1484. However, the President's power to appoint principal officers cannot be fettered by statutory requirements that the individuals nominated be drawn from persons meeting prescribed qualifications. "By its terms, the [Appointments] Clause divides the appointment power into two separate spheres: the President's power to 'nominate' and the Senate's power to give or withhold its 'Advice and Consent.' No role whatsoever is given either to the Senate or to Congress as a whole in the process of choosing the person who will be nominated for appointment . . . Indeed, the sole limitation on the President's power to nominate these officials is found in the Incompatibility Clause, . . . U.S. Const., Art.

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[4] The Memorandum of the Congressional Research Service to the House Committee on Interior and Insular Affairs, Subcommittee on National Parks and Public Lands, re: Response to Justice Department Comments on the Validity of the For Cause Removal and Direct Reporting Provisions of H.R. 3964 (May 24, 1988) ("CRS Memo"), makes the sweeping claim that the courts' decisions "accord Congress virtually plenary power over the creation of the structure of the administrative bureaucracy and the power and tenure of the offices and officers who are to carry out the legislative will." CRS Memo at CRS-5 (emphasis added). Especially in light of Morrison's careful delineation of the limits to Congress' power to restrict the removal power of the President, the CRS' assertion must be rejected.

I, § 6, cl. 2." Public Citizen v. United States Dep't of Justice, 109 S. Ct. 2558, 2581 (1989) (Kennedy, J., concurring in the judgment).

3. The guarantee of independence to the Director in providing information and budget requests to Congress is similarly infirm. The Director, as a subordinate executive branch officer, is subject to the complete supervision of the President with respect to carrying out his executive functions. The President's power includes the right to supervise and review the work of the Director, and the President can freely delegate this supervisory power to an administrative authority. Because the bills seek to free the Director to transmit information to Congress without review, clearance, or approval by any other administrative authority, even if such review were required by the President, it is an unconstitutional impairment of the unitary powers of the executive branch. Further, Congress cannot require an executive branch officer to provide materials to Congress that are protected by executive privilege. United States v. Nixon, 418 U.S. 683 (1974).[5]

4. We also object to the S. 844's provisions for a Review Board, and in particular to those provisions that purport to confer on the Board the power to submit a separate budget to Congress and to disclose executive branch material without the necessity of prior review, clearance, or approval within that branch.

a. Review Board members are to be appointed by the President from among those "considered knowledgeable regarding policy issues affecting the natural or cultural resources of the Nation," and are removable by the President "only for inefficiency, neglect of duty, or malfeasance in office." S.

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[5] The CRS Memo, supra, controverts this view. It relies in particular on a decision of the First Congress to require the Secretary of the Treasury to report to Congress. See CRS Memo at CRS-14 - CRS-15 (citing Act of 2 September 1789, 1 Stat. 65 (creating the Treasury Department)). However, no similar provision is found in contemporary acts creating other departments, such as the War Department and the Department of Foreign Affairs. The Treasury Department is a "special case" in that no other department has ever been created with such close reporting ties to Congress. The reason is historical: habits of thought carried over from the colonial, state, and Confederation experience caused the First Congress to hesitate before giving the Treasury Department specific executive classification. See W.E. Binkley, President and Congress, 36-40 (3d ed. 1962). A truer view would recognize that this early -- and long superseded -- practice respecting the Treasury was a unique historical "accident" without any precedential value for other Executive departments (or even for the Treasury itself).

844, section 1(b). By virtue of being appointed by the President and removable (for cause) by him, the Review Board unquestionably appears to be an advisory body within the Executive. Yet despite this, the Review Board is authorized by section 1(a)(3) to submit its own alternative budget request "[c]oncurrently with the submission" of the President's annual budget. We believe that the President has the exclusive right to speak for the entire executive branch when submitting to Congress a proposed annual budget of the United States, and that statutorily mandated separate budget submissions from diverse entities within the executive branch would be constitutionally improper.[6] Consequently, we object to section 1(a)(3)'s requirement for such a separate budget submission on the part of the Board. In addition, we object to section 1(b)'s ostensible restrictions on the President's power to select members of the Review Board, so long as that board is an advisory group within the executive branch.

b. We also object to section 1(a)(3) insofar as it obliges the Review Board -- an executive branch advisory body -- to "provide any other information on the request of any committee or subcommittee of Congress . . . without review, clearance, or approval by any other administrative authority except to the extent that the Board may deem such review, clearance, or approval appropriate."[7] Such a requirement interferes with the President's authority as head of a unified Executive to control the deliberative process with that branch and to speak with one voice to Congress. Furthermore, while Congress may be able to authorize the Review Board to secure from the Service materials otherwise protected by section 552 through 552b of title 5, see sec. 1(g), the bill cannot be lawfully construed to authorize the Board to deliver to Congress any materials independently protected by executive privilege.

Due to the manifest interference with the President's authority to control executive branch officers, the Department of

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[6] The President has absolute power to recommend measures to Congress "as he shall judge necessary and expedient," U.S. Const., Art. II, sec. 3. This of course includes the power to submit within the annual budget a request to fund the programs and activities of the Service and of the Review Board.

[7] Our objections here resemble those we have made to similar provisions respecting the Director.

Justice would recommend that the President veto both bills should either be enacted.

Mr. Chairman, thank you for the invitation to comment on S. 844, Mr. Bradley's bill to establish a National Park System Review Board and for other purposes in relation to the National Park Service. Such attention to the National Park Service is, we feel, overdue, given the political pressures that have been exerted on the agency during the last decade.

The fact that the Association of National Park Rangers feels compelled to testify in writing rather than in person is perhaps one of the strongest arguments in favor of S. 844. Composed of 1,600 professional Rangers, the Association is committed to the preservation and protection of the cultural, recreational and natural heritage of our nation. No member of the Association felt that he or she could take the career risk of testifying in favor of certain aspects of S. 844.

There has been, Mr. Chairman, considerable public debate over the provisions of S. 844 and its companion bill, H. R. 1484, already passed by the House of Representatives, that would remove the National Park Service from the direction of the Secretary of the Interior. The Association does not have an official view on the wisdom of these provisions. We see advantages and disadvantages in the current organization and in the organization outlined in S. 844. What we would ask is that the ability of park professionals to voice points of view on significant policy issues be restored and protected. We have watched with dismay as senior National Park Service professionals have testified at Congressional or other public hearings. What they say is often at odds with what we know they believe. The nation simply cannot afford to have the resource values of the National Park System sacrificed for narrow partisan goals.

The Association strongly supports the plan to require that the Director of the National Park Service be a Presidential appointee, subject to confirmation by the United States Senate. As you are well aware, the Director's position is one of only two of the ten Bureau Directors within the Department of the Interior that is not a Presidential appointment. Appointment by the President would confer upon the position additional prestige. Senate confirmation would allow a public debate on the merits of the appointment. We would suggest, however, that S. 844 be amended to provide further guidance on the qualifications of the Director. A future Director should be a career parks person with some experience in government service. The Director's term should coincide with that of the President who appoints him or her.

The Association believes that the Congress has provided sufficient guidance to the National Park Service on what areas the Congress feels are critical for management action. We do not support, therefore, the legislative prescription for three Deputy Directors. We believe the Director should have the latitude to establish the kind of organization that would respond to the management challenges surrounding the administration of the National Park System.

The Association supports the creation of a National Park System Review Board. The advice and counsel of the members of the Board would be of great benefit to the Director of the National Park Service. The Board's public meetings would provide a forum for debate on the policy issues that surround the management of our nation's park resources. Coupled with the records of Congressional hearings, there would exist an unprecedented public record upon which to base future legislative initiatives and agency policy decisions. The Board's budget recommendations would provide the executive and legislative branches an unencumbered view of the needs of the National Park Service, and its annual report would assist in establishing priorities for the allocation of fiscal and human resources.

Mr. Chairman, thank you for the opportunity to comment on S. 844. If you need additional information or if we can be of further assistance, please do not hesitate to contact us.

STATEMENT OF HOWARD H. CHAPMAN REGARDING S.844 A BILL TO ESTABLISH A NATIONAL PARK SYSTEM REVIEW BOARD. AND FOR OTHER PURPOSES.

I appreciate the opportunity to reflect on my experience in the National Park Service as it relates to S.844. My name is Howard H. Chapman, now retired after spending 40 years in the National Park Service, the last 15 as Regional Director of the Service's Western Region.

Twice over the past two years I have appeared before the Subcommittee on National Parks and Public Lands of the House Committee on Interior and Insular Affairs to testify in support of H.R. 1484 and its predecessor H.R. 3964. The experiences of my last seven years in the National Park Service remained particularly fresh in my mind and I felt strongly that something had to be done to redefine the interface a professional organization has with its political direction. Since testifying I continue to observe actions that cause me to have concerns for the future of the National Park System and the professional integrity of the National Park Service.

It is unfortunate, the underlying cause for this legislation has been the lack of a supportive commitment by the Department of the Interior for executing the mission of the National Park Service as defined by Congress. While it is argued today by Assistant Secretary for Fish, Wildlife & Parks, Constance Harriman, that the confrontational actions of former Secretaries Watt and Hodel and their Assistant Secretaries Horn and Norton have been turned to more kind and gentle relationships with the National Park Service - there are no reassuring directives that would prevent a reoccurrence The calmer relations with the NPS that Assistant Secretary Harriman points to, in fact, belie the more fundamental question. That is, how much direct involvement should there be by political appointees into the day to day operations of the National Park Service. Even as this hearing was in progress a person on Assistant Secretary Harriman's staff called back a letter signed by the Deputy Director, acting as Director, to a high governmental official because that staff person wanted the decision reviewed. While it makes no headlines in its subject matter, it demonstrates that the staff of the Assistant Secretary still assert themselves into daily operational matters. Further, as testified to by Assistant Secretary Harriman, she still passes on the selection, placement and/or promotion of GS/GM-15 and above personnel in the NPS. This means every GM-15 superintendent (Yosemite, Everglades, Yellowstone, Gateway or Golden Gate to name only a few) as well as every policy position in the Washington NPS Office must bear her approval. The Assistant Secretary remains the reviewing official for all performance evaluations of personnel in the Senior Executive Service (SES) which includes all regional directors

and the Washington Office Directorate. It was only a year ago because of the intense reaction coming from Congressional review that Secretary Lujan backed off his proposal to place the Superintendents of Yellowstone and Yosemite in the Senior Executive Service. At least in the NPS, the SES has not been a program advancing managerial excellence, but instead has been one that has resulted in more injection of Departmental political influence on the Service's major policy and leadership positions (Washington Office Associate Directors and the field regional directors).

Therefore, when comparing events of today's administration with that of former Secretary Watt or Hodel, one can only conclude that the difference is in atmosphere and not of changed authorities.

The actions that so outraged the Congress about Assistant Secretary Horn changing performance evaluations of NPS Associate Directors and Regional Directors when he was the reviewing official, we find are authorities still possessed by the Assistant Secretary and which in this hearing NPS Director Ridenour endorsed! It is little wonder why Assistant Secretary Harriman argues against Senate confirmation of the Director of the National Park Service!

Director Ridenour stated in this hearing on February 21 that there was low morale in the NPS when he entered on board citing low wages and poor housing for employees, yet his own Assistant Director for Legislation has stated that housing for employees is the Assistant Secretary's initiative and not that of the Director!

One is left with only one reaction to all this and that is that Director Ridenour is there in name only. The de facto Director of the National Park Service is the Assistant Secretary for Fish, Wildlife & Parks. I, therefore, believe a solid case does exist for Congressional action to bring authority, responsibility and accountability into sharper focus in the NPS.

Much is said about independent agency status for the Service as the answer to the above problems. However, scrutiny of where accountability should rest in relation to authority and responsibility is the first step. The solution takes form from examining events that led to this legislation.

This begins with the stipulation that there is a meeting point between elected officials along with their appointees and those who carry on the business of government. This is a long established premise of our Republic. For many years with the NPS that interface was with the Director. That position had the <u>responsibility</u>, had the <u>authority</u> and was therefore

accountable for the Service. As a park professional the Director's position required experience as well as training that made the person a respected leader in the park field. Certainly, S.844's requirement for these credentials speaks to a tried and proven principle. Senate confirmation would be an avenue to explore the candidate's experience and professional stature as well as how that person might relate to other influences. Thus, requiring a professional background combined with the opportunity to explore that background's validity, are essentials in the reestablishment of the Director's credibility.

This naturally leads to the position's critical execution - that being the degree to which the position is the focal point for the public's concerns (political) and the professional execution of the parks' mission. Independent status as an agency has been advanced as one means of doing this in conjunction with specific appointment terms for the Director and who makes the appointment. If we return to a principle of this government that political and professional forces have to meet - then it is possible to achieve this without a major organizational upheaval but with precise perimeters set for how the affairs of the Service will be directed. Assistant Secretary Harriman has referred to the Reorganization Plan Number 3 of 1950 adopted by former President Truman to consolidate program authority in the Cabinet so the President could hold a single officer accountable for programs of the Department. The same logic can be applied in the case of the Director who should be able to hold accountable all personnel within his organization and not find others over which he has no control giving direction to his subordinates. The principle of unity of command has long been advocated but has been repeatedly violated under the Watt, Hodel and Lujan administrations to the point that the focus of accountability has virtually disappeared from the NPS. It can be argued that as all functions of officers of the Department of the Interior were transferred to the Secretary under the reorganization plans of 1949 and 1950, it has been the Secretary's delegations in recent years that have eroded the authority of the Director and thereby has brought contradictory results to those expected by agencies from the reorganization plans.

The opening section of S.844 calls for establishment of a National Park Service Review Board. The employment status of this board needs to be considered carefully. Two years ago former NPS Director Hartzog cautioned that requiring a full-time Review Board would have eliminated the services of such individuals as Laurance Rockefeller, Starker Leopold or Dr. Emil Haury - people who had a very sincere interest in the national parks but whose livelihood stemmed from other pursuits. These men served with distinction in past years on the Secretary's Advisory Board. The need to

have eminently qualified people as advisors from the disciplines represented in the parks on a Review Board is far more important than a lesser qualified full-time person. If the Review Board were to recapture the stature once held by the Secretary's Advisory Board on National Parks and then be supported by professional staff, independent of the National Park Service, it would be in the best position to serve Congress and the parks. With these modifications a reinvigorated Secretary's Advisory Board could go a long way in meeting what S.844 seeks to accomplish. However, that means appointments are based on a person's professional stature in the representative professions in the Service and not as a political favor for unrelated services rendered. There was a time when the Congress looked to this Board for the professional review of proposed additions to the National Park System because it was composed of the eminent leaders of their field. Unfortunately, today it has become a place to seek status rather than render service to the mission of the national parks.

S.844's direction which would have the Review Board present an independent budget recommendation for the NPS to Congress would certainly overcome what occurs today when the NPS budget contains only what the Administration is willing to present. The principle that an agency presents an approved Administration budget is proper and is not questioned. However, when regional directors are told, as they were in 1987 by Secretary Hodel, not to discuss nor to answer questions in appropriation hearings beyond what is in the budget, then the current system is counter productive to judging a budget against total needs. What these last 10 years under this system shows, is that the public knows better the condition of the national parks than what Congress can learn from the budgets presented by the National Park Service as it is directed by OMB and the Department of the Interior.

It has been argued that the Review Board, under provisions of S.844 would have none of its reports or recommendations subject to administrative review or clearance. To the contrary, it has been the administrative review and clearance of professional reports by the Assistant Secretary to make them politically acceptable, that has been the problem and is what needs to be controlled. Further, this board by meeting throughout the country could rejuvenate public involvement and provide a perspective to the Congress that it does not have today.

The argument has also been advanced that the National Park Service needs a Cabinet-level officer to represent them, particularly to be at hand when conflicts arise with other agencies, such as the Bureau of Land Management or the Forest Service. From a more critical standpoint, however, when the

administration seeks to maximize resource development, and the issue involves threats to parks from mining, logging, grazing or oil and gas drilling by other federal agencies, the Secretary is not an unbiased referee! The Interior Department's efforts to muzzle the concerns of the Superintendent of Everglades National Park about off shore oil drilling is a recent example. It wasn't until there was a Congressional inquiry that the Superintendent's comments were entered into the record. .

This legislation proposes to establish three Deputy Directors, one each for: The National Park Service, Historic Preservation and Cultural Resources, and finally Recreation, Conservation and Open Space. Conspicuously absent in these titles is Science and Natural Resources. It is an area that is fundamental to the health and viability of the natural areas that are so much a part of the entire National Park System. The Service has struggled for many years to develop a science program, but what has repeatedly happened is that management attention and money have gone to physical facilities maintenance while the very resources that are the center piece of the System are being impacted by threats of every kind without the benefit of baseline knowledge to find solutions. Let there be no mistake about it - a Deputy Director dealing with the daily operational issues of the National Park Service will not have the time to do the job demanded for the kind of Science program needed. Consideration should be given to organizationally dealing with four major fields: Cultural (Historic) Resources, Natural (Science) Resources, Recreation (& Open Space) and Management of the National Park System.

In conclusion, my observation of what has transpired, particularly in the last nine years, is that political appointees of the Department of the Interior have steadily and deliberately inserted themselves into the day to day operations of park management. In turn, they have damaged the ability of the Director to lead and have politicized the management of the National Park Service to the degree that resource threats are increasing rather than being eliminated. As we face a future with emerging problems of global impacts on parks together with increased demands on space and resources the continuance of the enmeshed political involvement throughout the organization has the potential to be the culmination of the prediction made by former NPS Director Newton B. Drury when he said:

> "If we are going to succeed in preserving the greatness of the National Parks they must be held inviolate. If we are going to whittle away at them, we should recognize that all such whittlings are cumulative and the end result will be mediocrity. Greatness will be gone!"

Let it not be said to our lasting embarrassment that we failed to address the issues before us because we lacked the vision of those who first placed these treasures in our care.

NCSHPO
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TESTIMONY

of the

National Conference of State Historic Preservation Officers

on the

National Park System Review Board

S. 844

Subcommittee on Public Lands, National Parks and Forests
Committee on Energy and Natural Resources

February 21, 1990

The National Conference of State Historic Preservation Officers supports the National Park System Review board bill. The National Conference endorses its purpose: independence for the National Park Service in the Department of the Interior.

The National Conference particularly supports the creation of a Deputy Director of the National Park Service for Historic Preservation (Section 2 (c)(1)(B)). The Historic Preservation Deputy Director will give the nation's historic preservation program needed visibility, accountability within the National Park Service.

BACKGROUND

The origin of S. 844 lies in a 1988 report of the National Parks and Conservation Association (NPCA) on the state of the National Park Service.[1] That report called for legislation to make the National Park Service an independent agency. The purpose of independence is to free the National Park Service to concentrate on its mission: the national parks. The Department of the Interior, according to the NPCA report, blocked the National Park Service from accomplishing its mission and superceded Park Service goals with conflicting Interior aims.

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[1]National Parks and Conservation Association, Investing in Park Futures. The National Park System Plan: A Blueprint for Tomorrow. Executive Summary. Washington, D. C.: 1988.

After the announcement of the NPCA report, House Interior National Parks and Public Lands Chairman Bruce Vento introduced the National Park System Review Board bill.

Concurrent with the NPCA study the preservation community made recommendations for improving the administrative structure of the national preservation program.

Beginning in 1984, the National Conference of State Historic Preservation Officers members conducted a study of the national preservation program.[2] The results of the National Conference study included a recommendation to give the preservation program independent agency status.

In 1987, the major, national preservation organizations agreed on a restructuring of the administration of the preservation program involving the creation of an independent-agency National Park Service headed by a director with three deputy directors responsible for the park system, recreation programs and for the national historic preservation program.

S. 844 provides the solution that both the National Parks and Conservation Association and national preservation organizations endorsed: independence for the National Park Service and for the preservation program.

NEED FOR INDEPENDENCE

Decisions occur where "the buck stops." For the National Park Service, "the buck stops" with the Secretary. The Department's mission is resource development not conservation of park land. The NPCA report argues for putting a "the buck stops here" sign on the desk of the Director of the National Park Service. The Director must be accountable for the Parks and must have the ability to be an advocate for the National Parks if our Parks are to be appropriately cared for and used. The location of the Director under the Assistant Secretary for Fish, Wildlife and Parks in the Interior Department reduces his or her accountability. The Director can "blame" the assistant Secretary or the Office of the Secretary for any decision that may not

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[2]The national historic preservation program was through the administration of the National Historic Preservation Act (16 USC 470). The Secretary of Interior delegated his authority to the National Park Service and, instead of creating a federal bureaucracy to administer the program, invited the Governors to participate. From the very beginning, the national preservation program was a partnership between the federal government and their "agents" in the State Historic Preservation Offices.

serve the best interests of the national parks. The Director must first serve the missions of the Department and subrogate the interests of the park system .

An independent National Park Service is essential to ensure the best protection of our national park system irrespective of the current administration or departmental secretary. Under an Interior Secretary who is open about the primacy of the development mission of his department the conflicts with the conservation purposes of the park system become front page news. A more conservation-minded Secretary may project a more positive pro-parks, public image, but the development-conservation conflict will continue. The parks will always be a secondary mission. Some have said it is better to "ride out the storm" of a James Watt and wait for a Rogers Morton. However, why wish an institutional "hurricane Hugo" on our national parks. Why not work to set up the best administrative structure possible to protect the parks?

PRESERVATION NEEDS A VOICE

Just as independence will benefit the park system, a deputy director for preservation will benefit the nation's historic preservation program. The mission of the National Park Service is the national parks. The parks constitute the three per cent of our nation's land area that Congress has set aside as monuments to our natural and historic heritage, a colossal outdoor Smithsonian.

The mission of caring for that 3% is all consuming and rightly occupies the full attention of the Park Service.

The mission of the national historic preservation program is to care for the conservation and use of 100% of the nation's land area. That responsibility comes not as an owner, curator but as a watch-dog, an advocate, a persuader. The skills involved in working to preserve land that you do not own or control are different from those needed to maintain the national park system. The one common skill is expertise in the physical preservation of individual historic properties whether restoration of specific buildings or archeological protection measures.

Preservationists focus outward. They operate in a world of revenue-minded local governments, bottom-line conscious developers, angry citizens, hassled federal employees trying to construct a project. Their tools consist of information on historic sites, the provisions of Section 106 of the National Historic Preservation Act, in some cases, local historic preservation laws, and large doses of moral suasion.

Park administrators focus inward in fulfilling their conservation mission. Their responsibility centers on the parks and any adverse effects to the parks occurring outside its boundaries.

The historic resources on the 100% of the nation's land need an advocate, the deputy director for preservation, who is on equal footing with the deputy director focusing on the 3% of the land that is the national parks. It is essential that the deputy director for preservation have a unified mission. The deputy director for preservation must be independent of internal, park responsibilities.

Just as the National Park Service, to fulfill its mission, must be independent from the conflicting, pro-development goals of the Department of the Interior, so the preservation program, to preserve historic properties on 100% of the nation, must have independence from the 3% focus of the National Park Service.

INDEPENDENCE ENSURED IN S. 844

The National Park System Review Board bill ensures the independence and accountability of the National Park Service in several ways.

The Director is appointed by the President and confirmed by the Senate.

The Director must have professional qualifications to administer the National Park Service.

The authorities of the Secretary of the Interior related to the park system are automatically conveyed to the Director.[1]

The National Park Service operates without micromanagement from the Department in fulfilling the mission of the National Park Service.

The Park Service submits its budget to Congress independently.

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[1] The National Conference of State Historic Preservation Officers is unclear as to whether this transfer includes Secretarial authorities under the National Historic Preservation Act.

SUGGESTIONS FOR CHANGE

The National Conference of State Historic Preservation Officers questions the advisability of creating a "co-administrative" body, the three-person, paid full-time, fully staffed Review Board with equal administrative responsibilities to the Director. The National Conference of State Historic Preservation Officers feels that such a Review Board would cloud the independence and accountability of the park system director, reversing the fundamental purposes of the bill. The National Conference of State Historic Preservation Officers prefers the House-passed bill which eliminated the Review Board.